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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 2012-0080, Sequence 5]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-60; 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 the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005-60. 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 2005-60 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 2005-60**

Item	Subject	FAR Case	Analyst
I .....	Reporting Executive Compensation and First-Tier Subcontract Awards .....	2008-039	Clark.
II .....	Payments Under Time-and-Materials and Labor-Hour Contracts .....	2011-003	Chambers.
III .....	Extension of Sunset Date for Protests of Task and Delivery Orders (Interim) .....	2012-007	Lague.
IV .....	DARPA-New Mexico Tax Agreement .....	2012-019	Chambers.
V .....	Clarification of Standards for Computer Generation of Forms .....	2011-022	Lague.
VI .....	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 subjects set forth in the documents following these item summaries. FAC 2005-60 amends the FAR as specified below:

**Item I—Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008-039)**

The interim rule published in the **Federal Register** at 75 FR 39414 on July 8, 2010, is adopted as final with changes. This rule implements section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), which requires the Office of Management and Budget to establish a free, public, Web site containing full disclosure of all Federal contract award information.

The interim rule required contractors to report executive compensation and first-tier subcontract awards on contracts expected to be \$25,000 or more. This information is available to the public.

The final rule removes the exception for inserting the clause in classified solicitations and contracts, or solicitations or contracts with individuals. Classified information is not required to be disclosed. The clause is not prescribed for contracts unless they are required to be reported in the

Federal Procurement Data System (FPDS). The final rule clarifies the responsibility of contracting officers to correct data originating from FPDS found by the contractor to be in error when the contractor completes the subcontract report. The definition of first-tier subcontractor is revised to allow contractors greater flexibility to determine their first-tier subcontractors. The rule also clarifies that a contractor must enter Transparency Act data when registering in the Central Contractor Registration (CCR) database and the contractor is required to report its executive compensation in CCR as a part of its annual registration requirement in CCR.

**Item II—Payments Under Time-and-Materials and Labor-Hour Contracts (FAR Case 2011-003)**

This final rule amends the FAR with regard to payments under time-and-materials and labor-hour contracts. First, the rule harmonizes payment provisions under commercial time-and-materials and labor-hour contracts and non-commercial time-and-materials and labor-hour contracts, largely by having commercial time-and-materials and labor-hour contracts adopt the payment provisions of non-commercial time-and-materials and labor-hour contracts. Second, the rule harmonizes conflicting provisions of the “Allowable Cost and Payment” and “Payments Under Time-and-Materials” and “Labor-Hour Contracts” clauses, which are both

prescribed under non-commercial time-and-materials contracts and labor-hour contracts, by using the same periods for invoicing, and submission of the completion voucher as those set forth in the “Allowable Cost and Payment” clause. This harmonization will serve to benefit small businesses under time-and-materials and labor-hour contracts by permitting bi-weekly rather than monthly invoicing, and providing contracting officers with the discretion to authorize even more frequent payments.

**Item III—Extension of Sunset Dates for Protests of Task and Delivery Orders (FAR Case 2012-007) (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) and section 813 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81). These statutes extend the sunset date for protests against awards of task or delivery orders to September 30, 2016. There is no effect on Government automated systems.

**Item IV—DARPA-New Mexico Tax Agreement (FAR Case 2012-019)**

This final rule amends the FAR to add the United States Defense Advanced Research Projects Agency (DARPA) to the list of agencies that have entered into an agreement with the State of New Mexico. The agreement eliminates the

double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico, and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Small businesses benefit from this agreement because they will no longer have the administrative effort and cost associated with collecting this tax.

#### Item V—Clarification of Standards for Computer Generation of Forms (FAR Case 2011–022)

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 79609 on December 22, 2011, to implement the removal of Federal Information Processing Standard (FIPS) 161. FIPS 161 is being removed based on the notice posted in the **Federal Register** at 73 FR 51276 on September 2, 2008, by the Department of Commerce. This is a technical change acknowledging the removal by the Department of Commerce of FIPS 161 and replacement with the American National Standards Institute (ANSI) X12 set of standards. There is no impact to the Government or contractors in establishing ANSI X12 as the new standard. Small businesses will continue to be able to generate forms by computer. No public comments were received on the proposed rule, therefore, the final rule will be published with no changes.

#### Item VI—Technical Amendments

Editorial changes are made at FAR 1.105–2, 16.301–3, 22.1801, 22.1802, 52.212–5, 52.215–20, 52.222–54, and 52.223–2.

Dated: July 16, 2012.

#### Laura Auletta,

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

Federal Acquisition Circular (FAC) 2005–60 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 2005–60 is effective July 26, 2012, except for Item I, II, and IV which are effective August 27, 2012.

Dated: July 11, 2012.

#### Richard Ginman,

*Director, Defense Procurement and Acquisition Policy.*

Dated: July 12, 2012.

#### Laura Auletta,

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

Dated: July 10, 2012.

#### Ronald A. Poussard,

*Director, Contract Management Division, National Aeronautics and Space Administration.*

[FR Doc. 2012–17717 Filed 7–25–12; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 2, 4, and 52

[FAC 2005–60; FAR Case 2008–039; Item I; Docket 2010–0093, Sequence 2]

RIN 9000–AL66

#### Federal Acquisition Regulation; Reporting Executive Compensation and First-Tier Subcontract Awards

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are adopting as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Federal Funding Accountability and Transparency Act of 2006 as amended by a section of the Government Funding Transparency Act of 2008, which requires the Office of Management and Budget (OMB) to establish a free, public Web site containing full disclosure of all Federal contract award information. This rule requires contractors to report executive compensation, and first-tier subcontractor awards on contracts of \$25,000 or more.

**DATES:** *Effective Date:* August 27, 2012.

*Applicability:* Contracting officers shall include the FAR clause at 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, in accordance with FAR 4.1403, in solicitations issued on or after the effective date of this rule, and resultant contracts.

Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts that include the FAR clause implemented in the interim rule dated July 2010, to require contactors to comply with the requirements of this final rule FAR clause, if the contractor will be required to provide another annual report. If the contracting officer is unable to negotiate this modification, the contracting officer shall obtain approval at least one level above the contracting officer to negotiate an alternate resolution.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Clark, Procurement Analyst, at 202–219–1813 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–60, FAR Case 2008–039.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On September 26, 2006, the Federal Funding Accountability and Transparency Act (hereafter referred to as the Transparency Act) (Pub. L. 109–282, 31 U.S.C. 6101 note), was enacted to reduce “wasteful and unnecessary spending,” by requiring that OMB establish a free, public Web site containing full disclosure of all Federal award information, for awards of \$25,000 or more. The Transparency Act required, by January 1, 2009, reporting on subcontract awards by Federal Government contractors and subcontractors. The Transparency Act’s initial phase was conducted as a Pilot Program (Pilot), to test the collection and accessibility of the subcontract data. In order to implement the Pilot, a proposed rule was published in the **Federal Register** at 72 FR 13234, on March 21, 2007, under FAR Case 2006–029.

A final rule implementing the Pilot was published in the **Federal Register** at 72 FR 51306, on September 6, 2007. Exempted from the Pilot were solicitations and contracts for commercial items issued under FAR part 12 and classified solicitations and contracts. To minimize the burden on Federal prime contractors and small businesses, the Pilot applied to contracts with a value greater than \$500 million and required the awardees to report all subcontract awards exceeding \$1 million to the Transparency Act database at [www.esrs.gov](http://www.esrs.gov). The Pilot terminated January 1, 2009.

On June 30, 2008, section 6202 of Public Law 110–252 amended the Transparency Act to require the Director of OMB to include an additional