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48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0076; Sequence 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–69; 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) 2005–69. 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 2005–69 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 2005–69

Item	Subject	FAR Case	Analyst
I	Definition of Contingency Operation	2013–003	Corrigan.
II	Iran Threat Reduction	2012–030	Davis.
III	Documenting Contractor Performance	2012–009	Glover.
IV	Repeal of Sunset for Certain Protests of Task or Delivery Order Contracts	2013–011	Jackson.
V	Least Developed Countries that are Designated Countries	2013–009	Davis.
VI	Update to Biobased Reporting Requirements	2013–006	Petrusek.
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 numbers and subjects set forth in the documents following these item summaries. FAC 2005–69 amends the FAR as specified below:

Item I—Definition of Contingency Operation (FAR Case 2013–003)

This final rule amends, without change, the interim rule published in the **Federal Register** at 78 FR 13765 on February 28, 2013, revising the definition of “contingency operation” in FAR 2.101 to address the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Expanding the definition to include responding to a major disaster or emergency will increase the circumstances under which agencies may raise the micropurchase and simplified acquisition thresholds. This may increase opportunities for awarding contracts to small entities located at or near a major disaster area or emergency activities.

Item II—Iran Threat Reduction (FAR Case 2012–030)

This final rule adopts the interim rule published in the **Federal Register** at 77 FR 73516, on December 10, 2013, with

minor changes. The interim rule amended the FAR to require certifications that implement the expansion of sanctions relating to the energy sector of Iran and sanctions with respect to Iran’s Revolutionary Guard Corps, as contained in titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012. This final rule will not have a significant economic impact on a substantial number of small entities. As a result, the certification required in this case ensures that contracting officers will not award to offerors that engage in transactions with the Iran Revolutionary Guard Corps that exceed \$3,000.

Item III—Documenting Contractor Performance (FAR Case 2012–009)

This rule amends FAR part 42 to provide Governmentwide standardized past performance evaluation factors and performance ratings, and to require all past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS).

This change is required by statute, as well as by the Office of Federal Procurement Policy, which requested that FAR part 42 be revised to include recommendations from the Government Accountability Office Report GAO–09–374, Better Performance Information Needed to Support Agency Contract Award Decisions, to provide Governmentwide standardized evaluation factors and rating scales for

the evaluation of contractor performance.

This rule specifically impacts contracting officers and contractors by clarifying the evaluation factors and performance ratings in the FAR. The rule also requires that all past performance information be entered into CPARS. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small business.

Item IV—Repeal of Sunset for Certain Protests of Task and Delivery Order Contracts (FAR Case 2013–011)

This final rule revises the FAR to implement a section of the 2013 National Defense Authorization Act (Pub. L. 112–239) for agencies covered by title 10 of the United States Code, namely DoD, NASA, and Coast Guard. This section removes the sunset date for protests against the issuance or proposed issuance of an order, valued at more than \$10 million, under a task-order contract or delivery-order contract for title 10 agencies only. This rule does not affect title 41 agencies.

Item V—Least Developed Countries That Are Designated Countries (FAR Case 2013–009)

This final rule amends the FAR in parts 25 and 52 to revise the definitions of “designated country” and “least developed country,” adding South

Sudan, removing the Maldives, and changing the name of East Timor to Timor-Leste. The United States Trade Representative (USTR) list of least developed countries that are designated as eligible countries under the Trade Agreements Act is derived from the United Nations Least Developed Countries List. The USTR has updated the list of least developed countries that are treated as designated countries. In acquisitions that are covered by the World Trade Organization Government Procurement Agreement, contracting officers must acquire only U.S.-made or designated country end products, or U.S. or designated country services, unless offers of such end products or services are not received or are insufficient to fulfill the requirement (FAR 25.403(c)). This final rule will not have a significant economic impact on small entities.

Item VI—Update to Biobased Reporting Requirements (FAR Case 2013–006)

This final rule amends the clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, to replace the requirement for agencies to insert the agency environmental point of contact with a single Web site for contractors to submit the annual biobased report. The Web site has instructions and frequently asked questions.

Item VII—Technical Amendments

Editorial changes are made at FAR 2.101, 22.1801, 29.401–3, 52.209–6, 52.212–5 and 52.222–54.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–69 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 2005–69 is effective August 1, 2013.

Dated: July 23, 2013.

Richard Ginman,

Deputy Director, Defense Procurement and Acquisition Policy.

Dated: July 26, 2013.

Laura Auletta,

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

Dated: July 25, 2013.

William P. McNally,

Director, Contract Management Division, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2013–18460 Filed 7–31–13; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005–69; FAR Case 2013–003; Item I; Docket 2013–0003, Sequence 1]

RIN 9000–AM48

Federal Acquisition Regulation; Definition of Contingency Operation

AGENCY: 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, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of “contingency operation” to address the statutory change to the definition made by the National Defense Authorization Act for Fiscal Year 2012.

DATES: *Effective:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Corrigan, Procurement Analyst, at 202–208–1963, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2013–003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 78 FR 13765 on February 28, 2013, amending the FAR to revise the definition of “contingency operation” at FAR 2.101 in accordance with the

statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81, enacted December 31, 2011). The definition of “contingency operation” was amended at 10 U.S.C. 101(a)(13) by adding “12304a”.

Paragraph (a) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), entitled “Authority to Order Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to Active Duty to Provide Assistance in Response to a Major Disaster or Emergency,” amends chapter 1209 of title 10, United States Code, by incorporating a new provision at section 12304a that provides for treatment of an operation as a contingency operation when the Secretary of Defense activates Reserves under the terms of 10 U.S.C. 12304a in response to a Governor’s request for Federal assistance in responding to a major disaster or emergency declared by the President.

The interim rule therefore added a reference to 10 U.S.C. 12304a (from section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81)) to the list of references in section (2) of the definition of “contingency operation” in FAR 2.101, Definitions.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) reviewed the public comments in the development of the final rule.

Only one comment was received. The respondent indicated that it concurred with the interim rule. Therefore, no change to the interim rule was deemed necessary for the final rule.

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 not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.