

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2013–0076, Sequence No. 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–72; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final 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) 2005–72. 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 the FAR case. Please cite FAC 2005–72 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–72

Item	Subject	FAR Case	Analyst
I	Service Contracts Reporting Requirements	2010–010	Loeb.
II	Prioritizing Sources of Supplies and Services for Use by Government	2009–024	Morgan.
III	Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations.	2013–005	Petrusek.
IV	Trade Agreements Thresholds	2013–021	Davis.

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 2005–72 amends the FAR as specified below:

Item I—Service Contracts Reporting Requirements (FAR Case 2010–010)

This final rule amends the FAR to implement section 743 of Division C of the Consolidated Appropriations Act, 2010. Section 743 calls for certain agencies, not including the Department of Defense, to submit annual inventories of service contracts. FAR subpart 4.17, Service Contracts Inventory, provides annual reporting requirements for agencies and contractors. Guidance for agencies is available at: <http://www.whitehouse.gov/omb/procurement-service-contract-inventories>. FAR clauses 52.204–14 and 52.204–15 provide contractors’ annual reporting requirements. Prime and first-tier contractors will submit the information by October 31 at www.sam.gov, including total dollar amount invoiced for services performed in the prior Government fiscal year and total amount of labor hours for the previous Government fiscal year.

To lessen the burden on small and large business prime contractors, information is reported annually, reporting is phased in over three fiscal

years, and only first-tier subcontracts are covered, not all tiers.

Contracting officers will verify that the clause is included in the contract or order. Agencies are responsible for reviewing contractor reported information to ensure it appears reasonable and consistent with available contract information. The agency is not required to address data for which the agency would not normally have supporting information. In the event the agency believes that revisions to the contractor reported information are warranted, the contractor is to be notified no later than November 15. By November 30, the contractor shall revise the report, or document its rationale for the agency for maintaining the information without change.

Item II—Prioritizing Sources of Supplies and Services for Use by Government (FAR Case 2009–024)

This final rule amends the FAR to update and clarify the priority of sources of supplies and services for use by the Government at FAR subpart 8.0. The final rule also includes a list of other existing Federal contract vehicles to consider for agency use, such as Governmentwide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), and other procurement instruments intended for use by multiple agencies, including blanket purchase agreements under Federal Supply Service contracts. The policy at FAR 7.102(a) is also revised to conform

with the amendments to FAR subpart 8.0.

Item III—Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations (FAR Case 2013–005)

This final rule adopts, without change, an interim rule which was published in the **Federal Register** at 78 FR 37686 on June 21, 2013. The interim rule amended the FAR to address concerns raised in an opinion from the U.S. Department of Justice Office of Legal Counsel that determined the Anti-Deficiency Act is violated when a Government contracting officer or other employee with the authority to bind the Government agrees, without statutory authorization or other exception, to an open-ended, unrestricted indemnification clause. This rule clarified for the public that an End User License Agreement, Term of Service, or similar agreement containing an indemnification provision, is unenforceable and nonbinding against the Government and Government-authorized end-users. The rule contained a new clause that applies to all solicitations and contracts and automatically applies to micro-purchases, including those made with the Governmentwide commercial purchase card.

Item IV—Trade Agreements Thresholds (FAR Case 2013–021)

This final rule amends 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.

Dated: December 19, 2013.

William Clark,

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

Federal Acquisition Circular (FAC) 2005–72 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 2005–72 is effective December 31, 2013 except for items I and II, which are effective January 30, 2014.

Dated: December 20, 2013.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: December 20, 2013.

Houston Taylor,

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

Dated: December 18, 2013.

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, 4, 8, 17, 37, and 52**

[FAC 2005–72; FAR Case 2010–010; Item I; Docket 2010–0010, Sequence 1]

RIN 9000–AM06

Federal Acquisition Regulation; Service Contracts Reporting Requirements

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 issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2010. This final rule amends the FAR to require service contractors for executive agencies, except where DoD has fully funded the contract or order, to submit information annually in support of agency-level inventories for service contracts.

DATES: *Effective:* January 30, 2014.

Applicability: The changes in this rule apply to solicitations issued and contracts awarded on or after January 30, 2014. Contracting officers will modify existing indefinite-delivery contracts, on a bilateral basis in accordance with FAR 1.108(d)(3), within six months of the effective date of the final rule, if the remaining period of performance extends beyond October 1, 2013, and \$2.5 million or more remains to be obligated.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–72, FAR Case 2010–010.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) requires executive agencies covered by the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270), except DoD, to submit to the Office of Management and Budget (OMB) annually an inventory of activities performed by service contractors. To allow review by the agency and any necessary correction by the contractor, Office of Federal Procurement Policy (OFPP) agreed to change the deadline for agencies to submit a service contract inventory to OMB from December 30 to January 15, even though section 743 of P.L. 111–117 establishes December. DoD is exempt from this reporting requirement because 10 U.S.C. 2462 and 10 U.S.C. 2330a(c) already require DoD to develop an annual service contract inventory.

Specifically, FAR 4.1703 establishes service contractor reporting requirements based on type of contract and dollar amount as stated below:

- Contract types (*e.g.*, cost-reimbursement, time-and-materials, and labor-hour contracts), which already require contractors to track labor hours closely in order to invoice the

Government, will have lower dollar thresholds than fixed-price contracts. Contractors will now be required to report on all cost-reimbursement, time-and-materials, and labor-hour contracts and orders above the simplified acquisition threshold (SAT).

- Contractors will be required to report on new fixed-price definite-delivery contracts at or above the following—

- \$2.5 million in Fiscal Year 2014;
- 1 million in Fiscal Year 2015; and
- \$500,000 from Fiscal Year 2016 onwards.

- For indefinite-delivery contracts including, but not limited to, indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition contracts (GWACs), and multi-agency contracts, reporting requirements will be determined based on the expected dollar amount and type of the orders issued under the contracts.

- First-tier subcontracts for services will be reported using the phase-in thresholds.

- Existing indefinite-delivery contracts will be bilaterally modified within six months of the effective date of the final rule if sufficient time and value remain on the base contract, which is defined as—

(i) A performance period that extends beyond October 1, 2013; and

(ii) \$2.5 million or more remaining to be obligated to the indefinite-delivery contract.

The threshold for existing indefinite-delivery contracts is consistent with the threshold for new fixed-price contracts. Agencies placing orders on these existing contracts after the effective date of this final rule will be required to report this information if the order meets the thresholds established in FAR 4.1703 (*e.g.*, above the SAT for cost-reimbursement, time-and-materials, and labor-hour contracts, and fixed-price contracts at or above \$2.5 million in Fiscal Year 2014 and phased-in thresholds thereafter).

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 22070 on April 20, 2011, to implement section 743(a). The section of the preamble discussing coverage for existing contracts was included in the correction published in the **Federal Register** at 76 FR 24443 on May 2, 2011.

On June 20, 2011, the period for public comment ended. Twelve respondents submitted comments on the proposed rule.

II. Determinations

The Federal Acquisition Regulatory (FAR) Council has made the following