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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 No. FAR 2014–0051, Sequence No. 1]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–74; Introduction**

**AGENCIES:** 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) 2005–74. 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 2005–74 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

**RULES LISTED IN FAC 2005–74**

Item	Subject	FAR Case	Analyst
I .....	Commercial and Government Entity Code .....	2012–024	Loeb.
II .....	Repeal of the Recovery Act Reporting Requirements .....	2014–016	Glover.
III .....	Expansion of Applicability of the Senior Executive Compensation Benchmark .....	2012–017	Chambers.
IV .....	Contractor Comment Period, Past Performance Evaluations .....	2012–028	Glover.
V .....	Defense Base Act .....	2012–016	Chambers.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–74 amends the FAR as specified below:

**Item I—Commercial and Government Entity Code (FAR Case 2012–024)**

This final rule adds subpart 4.18, “Commercial and Government Entity Code,” and related provisions and clauses, to the FAR. The new subpart requires the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) Cage (NCAGE) codes for foreign entities, for awards valued above the micro-purchase threshold. The final rule also requires offerors, if owned by another entity, to identify that entity during System for Award Management (SAM) registration. The rule effective date is November 1, 2014.

**Item II—Repeal of the Recovery Act Reporting Requirements (FAR Case 2014–016)**

This final rule adopts as final, with changes, two interim rules published on March 31, 2009, and July 2, 2010, under FAR case numbers 2009–009 and 2010–008. The interim rules amended the FAR to implement reporting requirements of the American Recovery

and Reinvestment Act in subpart 4.15, 42.15, and clause 52.204–11, American Recovery and Reinvestment Act-Reporting Requirements. Future reporting requirements after January 31, 2014, were repealed by section 627 of Division E of the Consolidated Appropriations Act, FY 2014 (Pub. L. 113–76). The reporting Web site has closed for future reporting. This rule does not change the reporting required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA) on existing contracts, as implemented in FAR subpart 4.14 and clause 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards. Therefore, contractors and agencies are still required to continue their FFATA reporting on existing contracts, as implemented in FAR subpart 4.14 and clause 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards.

**Item III—Expansion of Applicability of the Senior Executive Compensation Benchmark (FAR Case 2012–017)**

This final rule adopts, without change, the interim rule published on June 26, 2013, at 78 FR 38535. The interim final rule amended the FAR by expanding the reach of the limitation on allowability of compensation for certain contractor personnel from a contractor’s five most highly paid executives to all employees, but only for contracts with the Department of Defense (DoD), the National Aeronautics and Space

Administration (NASA), and Coast Guard. The interim rule implemented section 803 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Prior to the interim rule, this limitation on the allowability of compensation, which is an amount set annually by the Office of Federal Procurement Policy, applied only to a contractor’s five most highly paid executives at each of their home office(s) and any segments that report directly to the contractors headquarters, and covered all Federal agencies. Under the interim and this final rule, the application of this limitation to a contractor’s five most highly paid executives continues for agencies other than DoD, NASA, and the Coast Guard. Because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis, the impact of this compensation limitation on small businesses will be minimal.

**Item IV—Contractor Comment Period, Past Performance Evaluations (FAR Case 2012–028)**

This final rule implements sections 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013) and 806 of the NDAA for FY 2012 (Pub. L. 112–81, enacted December 31, 2011; 10 U.S.C. 2302 Note). These statutes require the Government to provide past performance information to source selection officials more quickly and to

give contractors 14 calendar days from the date of delivery of past performance evaluations to submit comments, rebuttals, or additional information for inclusion in the past performance database. The evaluations will be posted to the database no later than 14 days after the evaluations are provided to the contractor. If a contractor has submitted comments to the Government and the Government has not closed the evaluation (*i.e.*, reconciled the comments), the evaluation as well as any contractor comment will be posted to the database automatically 14 days after the evaluations are provided to the contractor. In this case, the database will apply a “Contractor Comment Pending Government Review” notification to the evaluation. Once the Government completes the evaluation, the database will be updated the following day and remove this notification. Contractors will also still be allowed to submit comments after the 14-day period.

#### Item V—Defense Base Act (FAR Case 2012–016)

This final rule amends the FAR to clarify contractor and subcontractor responsibilities to obtain workers’ compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 901, *et seq.*) as extended by the Defense Base Act (42 U.S.C. 1651, *et seq.*). This Act provides disability compensation, medical benefits, and death benefits, for certain employment outside of the United States. The rule only clarifies the current responsibilities of contractors under the Defense Base Act and Department of Labor (DOL) regulations, and does not initiate or impose any new administrative or performance requirements. This final rule has no impact on small business entities since it is merely clarifying already existing statutory and DOL regulatory requirements, and imposes no new requirements.

Dated: May 22, 2014.

#### William Clark,

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

Federal Acquisition Circular (FAC) 2005–74 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 2005–74 is effective May 30,

2014 except for item I, which is effective *November 1, 2014*, and items IV and V, which are effective *July 1, 2014*.

Dated: May 20, 2014.

#### Richard Ginman,

*Director, Defense Procurement and Acquisition Policy.*

Dated: May 22, 2014.

#### Jeffrey A. Koses,

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

Dated: May 20, 2014.

#### Ronald A. Poussard,

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

[FR Doc. 2014–12411 Filed 5–29–14; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 4, 12, 22, and 52

[FAC 2005–74; FAR Case 2012–024; Item I; Docket No. 2012–0024, Sequence No. 1]

RIN 9000–AM49

#### Federal Acquisition Regulation; Commercial and Government Entity Code

**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 require the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) CAGE (NCAGE) codes for foreign entities, for awards valued at greater than the micro-purchase threshold. The CAGE code is a five-character alpha-numeric identifier used extensively within the Federal Government. The rule will also require offerors, if owned by another entity, to identify that entity.

**DATES:** *Effective:* November 1, 2014.

**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 2005–74, FAR Case 2012–024.

## SUPPLEMENTARY INFORMATION:

### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 78 FR 23194 on April 18, 2013, soliciting public comments on the proposed rule and received one response.

DoD, GSA, and NASA are revising the FAR to require that offerors provide their CAGE codes to contracting officers and that, if owned by another entity, offerors will provide, in a new provision with their representations and certifications, the CAGE codes and names of such entity or entities. For those offerors located in the United States or its outlying areas that register in the System for Award Management (SAM), a CAGE code is assigned as part of the registration process. If SAM registration is not required, the offeror must request and obtain a CAGE code from the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch. A CAGE code is not required when a condition described at FAR 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA. Offerors located outside the United States will obtain an NCAGE from their NATO Codification Bureau or, if not a NATO member or sponsored nation, from the NATO Support Agency (NSPA).

The Federal procurement community strives toward greater measures of transparency and reliability of data, to facilitate achievement of rigorous accountability of procurement dollars, processes, and compliance with regulatory and statutory acquisition requirements, *e.g.*, the Federal Funding and Accountability and Transparency Act of 2006 (Pub. L. 109–282, 31 U.S.C. 6101 note). Increased transparency and accuracy of procurement data broaden the Government’s ability to implement fraud detection technologies restricting opportunities for mitigating occurrences of fraud, waste, and abuse of taxpayer dollars.

To further the desired increases in traceability and transparency, this rule uses the unique identification that a CAGE code provides, coupled with vendor representation of ownership and owner CAGE code. The CAGE code is a five-character alpha-numeric identifier used extensively within the Federal Government and will provide for standardization across the Federal Government. This rule will support successful implementation of business tools that provide insight into—  
—Federal spending patterns across corporations;