

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015-0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-82; 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) 2005-82. 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 see the 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 2005-82 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 2005-82

Item	Subject	FAR Case	Analyst
I	Equal Employment and Affirmative Action for Veterans and Individuals with Disabilities	2014-013	Loeb.
II	Review and Justification of Pass-Through Contracts	2013-012	Hopkins.
III	Enhancements to Past Performance Evaluation Systems	2014-010	Glover.
IV	Technical Amendments.		

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 2005-82 amends the FAR as specified below:

Item I—Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities (FAR Case 2014-013)

DoD, GSA, and NASA are issuing a final rule adopting the interim rule published July 25, 2014, without change. The interim rule amended the FAR to implement final rules issued on September 24, 2013, by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities. The DOL rules provide clarification of mandatory listing of employment openings, the posting of notices, making notices accessible to persons with disabilities, and requiring nondiscrimination statements in contractor solicitations or advertisements for employees. The FAR clauses were restructured in the interim rule to provide a citation to the applicable clause in the DOL regulations and include a statement that summarizes contractors' top level obligations under each clause. There is no significant impact on small entities imposed by the FAR rule.

Item II—Review and Justification of Pass-Through Contracts (FAR Case 2013-012)

This final rule amends the FAR to implement section 802 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), which provided for additional requirements relative to the review and justification of pass-through contracts. In those instances where an offeror for a contract, task order, or delivery order informs the agency pursuant to FAR 52.215-22 of their intention to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, section 802 requires the contracting officer to (1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work; (2) make a written determination that the contracting approach selected is in the best interest of the Government; and (3) document the basis for such determination. These statutory requirements are being implemented in FAR 15.404-1(h) and for consistency purposes are applicable to all of the agencies subject to the FAR even though section 802 only applied to the Department of Defense, the Department of State, and the United States Agency for International Development.

Because the rule augments the current responsibilities of contracting officers relative to the review and justification of

pass-through contracts and does not initiate or impose any new administrative or performance requirements on contractors, and specifically exempts contract actions awarded pursuant to FAR subparts 19.5, 19.8, 19.13, 19.14, or 19.15, there is no impact on small businesses.

Item III—Enhancements to Past Performance Evaluation Systems (FAR Case 2014-010)

This final rule changes the language at FAR 42.1502 to accommodate the recent merger of the Architect-Engineer Contract Administration Support System (ACASS) and the Construction Contractor Appraisal Support System (CCASS) as modules within the Contractor Performance Assessment Reporting System (CPARS) database. This action will standardize the past performance reporting requirements under the CPARS database. The ACASS and CCASS modules were merged into CPARS on July 1, 2014.

This change does not place any new requirements on small entities.

Item IV—Technical Amendments

Editorial changes are made at FAR 4.905(a), 22.102-2(a), 39.101(a)(1)(ii), 52.212-4(v), 52.212-5(b)(36)(i), (b)(36)(ii), (b)(39)(ii), and (e)(1)(v), 52.213-4(a) and (b), and 52.223-16.

Dated: April 30, 2015.

William Clark,

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

Federal Acquisition Circular (FAC) 2005–82 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 2005–82 is effective May 7, 2015 except for items II and III, which are effective June 8, 2015.

Dated: April 29, 2015.

RADM Althea H. Coetzee,
Acting Director of Defense Procurement and Acquisition Policy

Dated: May 1, 2015.

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

Dated: April 28, 2015.

William P. McNally,
Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

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48 CFR Parts 1, 22, and 52

[FAC 2005–82; FAR Case 2014–013; Item I; Docket 2014–0013, Sequence 1]

RIN 9000–AM76

Federal Acquisition Regulation: Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities

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 implement final rules issued by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and

affirmative action for veterans and individuals with disabilities.

DATES: *Effective:* May 7, 2015.

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 2005–82, FAR Case 2014–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 79 FR 43575 on July 25, 2014, to implement two DOL final rules that were published in the **Federal Register** on September 24, 2013, at 78 FR 58614 and at 78 FR 58682 as follows:

- “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans,” which amended DOL regulations at 41 CFR parts 60–250 and 60–300 (78 FR 58614).
- “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities,” which amended DOL regulations at 41 CFR part 60–741 (78 FR 58682).

II. Discussion and Analysis

No public comments were submitted, and no changes have been made to the interim 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 a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Both rules issued by the DOL were determined to be economically

significant under E.O. 12866, and major rules under 5 U.S.C. 804. The Regulatory Impact Analysis for these rules was published in the **Federal Register** on September 24, 2013 at 78 FR 59643 and at 78 FR 58714. The FAR rule adds no new information collections, recordkeeping, or other compliance burdens. The FAR rule cites to the DOL Office of Management and Budget (OMB) Control numbers 1250–0004 and 1250–0005 for OMB approval under the Paperwork Reduction Act for any information collection requirements associated with revised FAR 52.222–35 (Equal Opportunity for Veterans) and 52.222–36 (Equal Opportunity for Workers with Disabilities). The FAR clauses, to be incorporated in solicitations and contracts in full text, include the required summary statement (paragraph (b) and (a) of each of the FAR clauses, respectively) and then reference to the DOL clauses. There is no economic impact arising from the FAR rule, since the FAR rule only informs the contractors of the requirements of the DOL rules. Further, each DOL rule states that “By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract. . . .” (41 CFR 60–300.5(e) and 60–741.5(e)). The FAR is not imposing requirements; it is incorporating the requirements into contracts to inform contractors.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 604, *et seq.* The FRFA is summarized as follows:

This final rule is being issued to implement changes to 41 CFR 60–25, 60–300, and 60–741, as published in the **Federal Register** on September 24, 2013 (78 FR 58614 and 58682), by the Office of Federal Contract Compliance Programs of the Department of Labor (DOL). The DOL rules revise the current regulations implementing 38 U.S.C. 4211 and 4212, and the nondiscrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. The DOL rules add requirements on mandatory job listings, data collection, and establishing hiring benchmarks.

There were no public comments submitted in response to the initial regulatory flexibility analysis.

With regard to equal opportunity for veterans, DOL estimated that the approximate number of small entities that would be subject to its rule would be 20,490 Federal contractors with between 50 and 500 employees (approximately 44% of Federal contractors may be impacted).