

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket No. FAR 2018–0001, Sequence No. 2]

**Federal Acquisition Regulation:
Federal Acquisition Circular 2005–98;
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) 2005–98. 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](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 2005–98 and the
specific FAR case number. For
information pertaining to status or
publication schedules, contact the
Regulatory Secretariat Division at 202–
501–4755.

RULES LISTED IN FAC 2005–98

Item	Subject	FAR case	Analyst
I	Task- and Delivery-Order Protests	2017–007	Gray.
II	Duties of Office of Small and Disadvantaged Business Utilization	2017–008	Fry.
III	Liquidated Damages Rate Adjustment	2017–004	Delgado.
IV	Audit of Settlement Proposals	2015–039	Delgado.

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
2005–98 amends the FAR as follows:

**Item I—Task- and Delivery-Order
Protests (FAR Case 2017–007)**

This final rule amends the FAR to
implement section 835 of the National
Defense Authorization Act (NDAA) for
Fiscal Year (FY) 2017 (Pub. L. 114–328).
Section 835 amends 10 U.S.C.
2304c(e)(1)(B) to raise the threshold for
task- and delivery-order protests from
\$10 million to \$25 million (applicable to
DoD, NASA, and the Coast Guard). The
section also amends 41 U.S.C. 4106(f) to
repeal the sunset date, which was also
previously repealed by the GAO
Civilian Task and Delivery Order Protest
Authority Act of 2016 (Pub. L. 114–260).
There will be an unquantifiable impact
on offerors (including small businesses)
that lose the right to protest awards of
task or delivery orders valued between
\$10 million and \$25 million, but the
impact is expected to be de minimis,
because there are very few protests of
procurements in that dollar range.

**Item II—Duties of Office of Small and
Disadvantaged Business Utilization
(FAR Case 2017–008)**

This final rule amends the FAR to
reflect additional duties for agencies’
Office of Small and Disadvantaged
Business Utilization, or for DoD’s Office
of Small Business Programs, which were
added to section 15(k) of the Small
Business Act by the NDAA for FY 2017.
This rule only provides information
regarding the internal operating
procedures of the Government.

**Item III—Liquidated Damages Rate
Adjustment (FAR Case 2017–004)**

This final rule amends the FAR to
adjust for inflation the rate of liquidated
damages assessed or enforced by
Department of Labor (DOL) regulations
for violations of the overtime provisions
of the Contract Work Hours and Safety
Standards Act. The FAR rule
implements DOL’s interim final rule
published in the **Federal Register** at 81
FR 43430 on July 1, 2016, DOL’s final
rule published in the **Federal Register** at 82
FR 5373 on January 18, 2017, and
subsequent adjustments for inflation
pursuant to the Federal Civil Penalties
Inflation Adjustment Act of 1990, as
amended by the Federal Civil Penalties
Inflation Adjustment Act Improvements
Act of 2015 (section 701 of Pub. L. 114–
74)(28 U.S.C. 2461 Note). There is no
significant impact on small entities
imposed by the FAR rule.

**Item IV—Audit of Settlement Proposals
(FAR Case 2015–039)**

This final rule amends the FAR to
raise the dollar threshold requirement
for the audit of prime contract
settlement proposals and subcontract
settlements from \$100,000 to \$750,000
to align with the threshold in FAR
15.403–4(a)(1) for obtaining certified
cost or pricing data.

The requirements in the rule will not
have a significant economic impact on
a substantial number of small entities.
Since the rule raises the audit threshold,
even fewer small businesses will be
subject to audits of their termination
settlement proposals resulting in a
reduction of time spent to complete
termination settlements.

Dated: April 25, 2018.

William F. Clark,

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

Federal Acquisition Circular (FAC) 2005–
98 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 2005–98
is effective May 1, 2018 except for items I,
II, III, and IV, which are effective May 31,
2018.

Dated: April 24, 2018.

Shay D. Assad,

Director, Defense Pricing/Defense Procurement and Acquisition Policy.

Dated: April 23, 2018.

Jeffrey A. Koses,

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

Dated: April 24, 2018.

Monica Y. Manning,

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

[FR Doc. 2018-09162 Filed 4-30-18; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 2005-98; FAR Case 2017-007; Item I; Docket No. 2017-0007, Sequence No. 1]

RIN 9000-AN41

Federal Acquisition Regulation: Task- and Delivery-Order Protests

AGENCY: 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 National Defense Authorization Act for Fiscal Year 2017 to raise the threshold for task- and delivery-order protests from \$10 million to \$25 million (applicable to DoD, NASA, and the Coast Guard) and to repeal the sunset date for the authority to protest the placement of an order (for the other civilian agencies), which was also previously repealed by the GAO Civilian Task and Delivery Order Protest Authority Act of 2016.

DATES: *Effective:* May 31, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, at 703-795-6328, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-98, FAR Case 2017-007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 835 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328) was enacted December 23, 2016. Section 835(a) amended 10 U.S.C. 2304c(e)(1)(B) to raise the threshold for task- and delivery-order protests from \$10 million to \$25 million (applicable to DoD, NASA, and the Coast Guard). Section 835(b) amended 41 U.S.C. 4106(f) to repeal the sunset date of September 30, 2016, of the authority to protest the placement of an order (for the other civilian agencies). The sunset date was already repealed on December 14, 2016, by the GAO Civilian Task and Delivery Order Protest Authority Act of 2016 (Pub. L. 114-260).

II. Discussion and Analysis

This final rule amends FAR 16.505(a)(10) to raise the threshold for DoD, NASA, and the Coast Guard from \$10 million to \$25 million and remove the sunset date for the other civilian agencies.

III. Expected Cost Savings

The rule is administrative in nature—it follows the statute exactly, raising a threshold and removing a sunset date.

Currently, FAR 16.505(a)(10)(i) prohibits any protest in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract; or the order is valued in excess of \$10 million. This FAR change implements section 835 of the National Defense Authorization Act for Fiscal Year 2017 to—

- Raise the threshold at which a protest may be filed at the Government Accountability Office (GAO) for task or delivery orders from \$10 million to \$25 million, applicable only to DoD, NASA, and the Coast Guard; and
- Remove the sunset date (September 30, 2016) for the authority to protest the placement of an order for agencies other than DoD, NASA, and the Coast Guard. Although, according to GAO, there are fewer than 10 protests per year of procurements between \$10 million and \$25 million, the higher threshold for protests of task or delivery orders for DoD, NASA, and the Coast Guard will result in savings for GAO and the affected Executive branch agencies, because there will no longer be protests of orders valued between \$10 million and \$25 million based on dollar value. While it is difficult to quantify, the lost benefit to interested parties who will

lose the right to protest as a result of this rule is likely de minimis, given the historical data from GAO indicating a small number of protests in the affected dollar range. Further, there are some benefits to offerors or contractors who win awards and will no longer need to expend resources defending challenges to the award. Therefore, the net burden of this rule is estimated as less than zero, though the FAR Council is not able to monetize cost savings.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new solicitation provisions or clauses, or impact any existing provisions or clauses.

V. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it follows the statute exactly, raising a threshold and removing a sunset date.

VI. 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 E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This