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Federal Acquisition Regulation; Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****[Docket FAR 2013–0076; Sequence 3]****Federal Acquisition Regulation;
Federal Acquisition Circular 2005–67;
Introduction****AGENCY:** 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) 2005–67. 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 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 2005–67 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 2005–67**

Item	Subject	FAR Case	Analyst
I	Contractors Performing Private Security Functions Outside the United States	2011–029	Jackson.
II	Contracting Officer's Representative	2013–004	Jackson.
III	System for Award Management Name Change, Phase 1 Implementation	2012–033	Glover.
IV	Interagency Acquisitions: Compliance by Nondefense Agencies with Defense Procurement Requirements.	2012–010	Corrigan.
V	Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations (Interim).	2013–005	Petrusek.
VI	Price Analysis Techniques	2012–018	Chambers.
VII	Contracting with Women-owned Small Business Concerns (Interim)	2013–010	Morgan.
VIII	Deletion of Report to Congress on Foreign-Manufactured Products	2013–008	Davis.
IX	Free Trade Agreement (FTA)—Panama	2012–027	Davis.
X	Updated Postretirement Benefit (PRB) References	2011–019	Chambers.
XI	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
2005–67 amends the FAR as specified
below:

**Item I—Contractors Performing Private
Security Functions Outside the United
States (FAR Case 2011–029)**

DoD, GSA, and NASA are issuing a
final rule amending the FAR to
implement Governmentwide
requirements contained in section 862
of the National Defense Authorization
Act (NDAA) for Fiscal Year (FY) 2008
(Pub. L. 110–181), as amended by
section 853 of the NDAA for FY 2009
(Pub. L. 110–417) and sections 831 and
832 of the NDAA for FY 2011 (Pub. L.
111–383). See 10 U.S.C. 2302 Note.
These statutes establish minimum
processes and requirements for the
selection, accountability, training,
equipping, and conduct of personnel
performing private security functions
outside the United States.

**Item II—Contracting Officer's
Representative (FAR Case 2013–004)**

This final rule amends the FAR to
improve contract surveillance by
clarifying the contracting officer's
representative (COR) responsibilities in
FAR 1.602–2(d). In addition, a
corresponding change is also made at
FAR 7.104(e). This case originated from
a Department of Defense (DoD) Panel on
Contracting Integrity recommendation.
The DoD Panel on Contracting Integrity,
an internal DoD panel, consists of
senior-level DoD officials from across
DoD working to review progress made
by DoD to eliminate areas of
vulnerability of the defense contracting
system that allow fraud, waste, and
abuse to occur, and recommend changes
in law, regulations, and policy to
eliminate the areas of vulnerability. In
order to improve the contracting
environment, this rule provides
additional explanation in the FAR to
ensure that CORs understand their
duties and responsibilities to survey
contractor performance. This final rule
is not required to be published for
public comment because it only
involves internal Government
procedures regarding the appointment
of CORs and the clarification of COR

responsibilities, and has neither a
significant effect beyond the internal
operation procedures of the agency
issuing the policy, regulation, procedure
or form, nor has a significant cost or
administrative impact on contractors or
offerors.

**Item III—System for Award
Management Name Change, Phase 1
Implementation (FAR Case 2012–033)**

This final rule amends the FAR by
updating references and names to
conform to the System for Award
Management (SAM) designation. The
SAM is a Federal Government owned
and operated free Web site that
consolidates the capabilities in certain
legacy systems that are used by Federal
officials in the procurement and awards
process. This rule incorporates language
that will transition the Central
Contractor Registration (CCR) database,
the Excluded Parties List System
(EPLS), and the Online Representations
and Certifications Application (ORCA)
to the SAM designation. This final rule
also makes a number of minor
additional conforming changes, such as
updates to definitions.

Item IV—Interagency Acquisitions: Compliance by Nondefense Agencies With Defense Procurement Requirements (FAR Case 2012–010)

This final rule adopts with minor changes an interim rule published in the **Federal Register** at 77 FR 69720 on November 20, 2012. The interim rule amended the FAR to implement section 801 of Pub. L. 110–181, as amended (10 U.S.C. 2304 Note). Section 801 requires compliance certifications by nondefense agencies that purchase on behalf of the Department of Defense (DoD), and clarifies which DoD laws and regulations apply. The agencies must comply with new FAR subpart 17.7, in addition to complying with FAR subpart 17.5. To provide clarification for small business and contracting officers, existing policy for small business goal credit for assisted acquisitions was added by the interim rule to section FAR 4.603(c).

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

This interim rule amends 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 clarifies for the public that an End User License Agreement (EULA), Terms of Service (TOS), or similar agreement, containing an indemnification provision, is unenforceable and nonbinding against the Government and Government-authorized end-users. The rule contains a new clause that applies to all solicitations and contracts and automatically applies to micro-purchases, including those made with the Governmentwide purchase card.

Item VI—Price Analysis Techniques (FAR Case 2012–018)

This final rule amends the FAR to clarify a reference used in FAR 15.404–1(b)(2)(i). FAR 15.404–1(b)(2) delineates the various price analysis techniques (to ensure a fair and reasonable price) with 15.404–1(b)(2)(i) being the comparison of proposed prices received from multiple offerors in response to a solicitation. The current reference in this section (FAR 15.403–1(c)(1)) was too broad; thus, this final rule changes

this reference to 15.403–1(c)(1)(i), which precisely aligns the price analysis technique of comparing proposed prices in 15.404–1(b)(2)(i) with the adequate price competition standard (for exceptions from certified cost or pricing data requirements) of comparing proposed prices from multiple offerors. Small businesses are not impacted by this final rule because this rule merely clarifies the reference, changing it to cite FAR 15.403–1(c)(1)(i) (rather than the more generalized 15.403–1(c)(1)) at 15.404–1(b)(2)(i), which describes the use of the price analysis technique of comparing proposed prices from multiple offerors in order to establish a fair and reasonable price.

Item VII—Contracting With Women-Owned Small Business Concerns (FAR Case 2013–010) (Interim)

This interim rule amends FAR 19.1505 to remove the dollar limitation for set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the Women-owned Small Business (WOSB) Program. This change implements section 1697 of the NDAA for FY 2013, Public Law 112–239, which amended section 8(m) of the Small Business Act (15 U.S.C. 637(m)).

As a result, contracting officers may set aside acquisitions for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program at any dollar level above the micro-purchase threshold, provided the other requirements for a set-aside under the WOSB Program are met.

Item VIII—Deletion of Report to Congress on Foreign-Manufactured Products (FAR Case 2013–008)

This final rule amends the FAR to eliminate an obsolete Congressional reporting requirement imposed by the United States Troops Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (41 U.S.C. 8302(b)(1)).

This Act required these reports to Congress for Fiscal Year 2007 through Fiscal Year 2011 on acquisitions of end products manufactured outside the United States. This report to Congress is no longer required but the collection of the data in Federal Procurement Data System is still required (see FAR 52.225–18, Place of Manufacture). This final rule only affects the internal operating procedures of the Government.

Item IX—Free Trade Agreement (FTA)—Panama (FAR Case 2012–027)

This final rule adopts without change an interim rule published November 20, 2012, which implemented a new Free Trade Agreement with Panama (see the United States—Panama Trade Promotion Agreement Implementation Act (Pub. L. 112–43) (19 U.S.C. 3805 note)).

This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Panama. This final rule is not expected to have a significant economic impact on a substantial number of small entities.

Item X—Updated Postretirement Benefit (PRB) References (FAR Case 2011–019)

This final rule amends FAR 31.205–6(o)(2)(iii)(A)(1) to remove references to paragraphs 110, 112, and 113 of the now superseded Financial Accounting Standard (FAS) 106, which were deleted in the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of generally accepted accounting principles (GAAP) and replaces them with explicit criteria that are their functional equivalent. The FAR referenced GAAP to provide criteria for determining the allowability of the transition obligation, when converting from pay-as-you-go accounting for postretirement benefits (PRBs) to an accrual method of accounting for the purposes of Government contract cost accounting.

This final rule will have a minimal economic impact on small businesses because it does not change the FAR substantively.

Item XI—Technical Amendments

Editorial changes are made at FAR 8.703, 8.714, 52.204–8, and 52.204–10.

Dated: June 13, 2013.

William Clark,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–14603 Filed 6–20–13; 8:45 am]

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