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Federal Acquisition Regulation; Federal Acquisition Circular 2005–72; Introduction; Service Contracts Reporting Requirements; Prioritizing Sources of Supplies and Services for Use by the Government; Terms of Service and Open-Ended Indemnification and Unenforceability of Unauthorized Obligations; Trade Agreements Thresholds; Federal Acquisition Circular 2005–72; Small Entity Compliance Guide; Final Rules

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](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](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.

[FR Doc. 2013–31147 Filed 12–30–13; 8:45 am]

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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