

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005–06; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and 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 in this Federal Acquisition Circular (FAC) 2005–06. 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.acqnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–06 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.acqnet.gov/far>.

| Item | Subject | FAR case | Analyst |
|------------|--|----------|-----------|
| I | Information Technology Security (Interim) | 2004–018 | Davis. |
| II | Improvements in Contracting for Architect-Engineer Services | 2004–001 | Davis. |
| III | Title 40 of United States Code Reference Corrections | 2005–010 | Zaffos. |
| IV | Implementation of the Anti-Lobbying Statute | 1989–093 | Woodson. |
| V | Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard | 2004–037 | Jackson. |
| VI | Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program. | 2004–036 | Marshall. |
| VII | Powers of Attorney for Bid Bonds | 2003–029 | Davis. |
| VIII | Expiration of the Price Evaluation Adjustment(Interim) | 2005–002 | Cundiff. |
| IX | Accounting for Unallowable Costs | 2004–006 | Olson. |
| X | Reimbursement of Relocation Costs on a Lump-Sum Basis | 2003–002 | Olson. |
| XI | Training and Education Cost Principle | 2001–021 | Olson. |

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–06 amends the FAR as specified below:

Item I—Information Technology Security (FAR Case 2004–018)

This interim rule amends the FAR to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

This interim rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

Item II—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001)

This final rule implements Section 1427(b) of the Services Acquisition Reform Act of 2003, which prohibits architect-engineering services from

being offered under GSA multiple-award schedule contracts or under Governmentwide task and delivery order contracts unless they are awarded using the procedures of the Brooks Architect-Engineer Act and the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal district or outlying area, in which the services are to be performed. This rule is of interest to agencies and contracting officers that use GSA schedules and Governmentwide task and delivery order contracts.

Item III—Title 40 of United States Code Reference Corrections (FAR Case 2005–010)

This final rule amends the FAR to reflect the most recent codification of Title 40 of the United States Code. No substantive changes are being made to the FAR.

Item IV—Implementation of the Anti-Lobbying Statute (FAR Case 1989–093)

This final rule converts the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990 to a final rule with minor changes amends the FAR to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new

section 1352 to Title 31 of the United States Code, entitled “Limitations on the use of funds to influence certain Federal contracting and financial transactions.” Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan. It also requires that each person who requests or receives a contract, grant or cooperative agreement in excess of \$100,000 or a Federal commitment to insure or guarantee a loan in excess of \$150,000 must disclose lobbying with other than appropriated funds. The rule requires contracting officers, in accordance with FAR 3.808, to insert in all solicitations and contracts expected to exceed \$100,000 the provision at FAR 52.203–11, “Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction,” and the clause at FAR 52.203–12, “Limitations on Payments to Influence Certain Federal Transactions.”

Item V—Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard (FAR Case 2004–037)

This final rule converts the interim rule published in the **Federal Register** at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule

amended the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from \$50 million to \$75 million. This change implemented section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B). In addition, corresponding changes have been made to FAR 13.501. The rule will reduce administrative burden for ordering activities.

Item VI—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036)

This final rule finalizes, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 by adding landscaping and pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve amount, currently \$25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals. The change may impact small businesses because these awards were previously set-aside for small businesses.

Item VII—Powers of Attorney for Bid Bonds (FAR Case 2003–029)

This final rule is of particular interest to contracting officers and offerors in acquisitions of construction that require a bid bond. This rule was initiated at the request of the Office of Federal Procurement Policy to resolve the controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney. This rule amends the FAR to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. This revision to FAR parts 19 and 28 removes the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening.

Item VIII—Expiration of the Price Evaluation Adjustment (FAR Case 2005–002)

This interim rule cancels the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change is required because the statutory authority for the adjustments has expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item IX—Accounting for Unallowable Costs (FAR Case 2004–006)

This final rule amends FAR 31.201–6, Accounting for unallowable costs, by adding paragraphs (c)(2) through (c)(5) to provide specific criteria on the use of statistical sampling as an acceptable practice to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also amends FAR 31.109, Advance agreements, by adding “statistical sampling methods” as an example of the type of item for which an advance agreement may be appropriate. The case was initiated by the Director, Defense Procurement and Acquisition Policy, who established an interagency ad hoc committee to perform a comprehensive review of FAR Part 31, Contract Cost Principles and Procedures. The rule is of particular importance to contracting officers and contractors who negotiate contracts and modifications, and determine costs in accordance with FAR Part 31.

Item X—Reimbursement of Relocation Costs on a Lump-Sum Basis (FAR Case 2003–002)

This final rule amends FAR 31.205–35 to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

Item XI—Training and Education Cost Principle (FAR Case 2001–021)

This final rule amends the FAR by revising the contract cost principle at FAR 31.205–44, Training and education costs. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing

language, and by restructuring the rule to list only specifically unallowable costs.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-06 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 2005-06 is effective October 31, 2005, except for Items I, II, III, IV, V, VI, VII, and VIII, which are effective September 30, 2005.

Dated: September 15, 2005.

Vincent J. Feck, Lt Col, USAF

Acting Director, Defense Procurement and Acquisition Policy.

Dated: September 22, 2005.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: September 14, 2005.

Anne Guenther,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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SPACE ADMINISTRATION**

48 CFR Parts 1, 2, 7, 11, and 39

**[FAC 2005–06; FAR Case 2004–018;
Item I]**

RIN 9000–AK29

**Federal Acquisition Regulation;
Information Technology Security**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition