

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0076, Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–45; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of 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) 2005–45. 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 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 2005–45 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 2005–45

| Item | Subject | FAR case | Analyst |
|-----------|---|----------|-----------|
| I | Inflation Adjustment of Acquisition—Related Thresholds | 2008–024 | Jackson. |
| II | Definition of Cost or Pricing Data | 2005–036 | Chambers. |
| III | American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Materials. | 2009–008 | 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 number and subject set forth in the documents following these item summaries.

FAC 2005–45 amends the FAR as specified below:

Item I—Inflation Adjustment of Acquisition—Related Thresholds (FAR Case 2008–024)

This final rule amends the FAR to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2010.

This is the second review of FAR acquisition-related thresholds. The Councils published a proposed rule in the **Federal Register** at 75 FR 5716, February 4, 2010.

The effect of the final rule on heavily-used thresholds is the same as stated in the preamble to the proposed rule:

- The micro-purchase base threshold of \$3,000 (FAR 2.101) is not changed.
- The simplified acquisition threshold (FAR 2.101) is raised from \$100,000 to \$150,000.

- The FedBizOpps preaward and post-award notices (Part 5) remain at \$25,000 because of trade agreements.
- Commercial items test program ceiling (FAR 13.500) is raised from \$5,500,000 to \$6,500,000.
- The cost or pricing data threshold (FAR 15.403–4) is raised from \$650,000 to \$700,000.
- The prime contractor subcontracting plan (FAR 19.702) floor is raised from \$550,000 to \$650,000, and the construction threshold of \$1,000,000 increases to \$1,500,000.

Item II—Definition of Cost or Pricing Data (FAR Case 2005–036)

This final rule amends the FAR by redefining “cost or pricing data,” adding a definition of “certified cost or pricing data,” and changing the term “information other than cost or pricing data,” to “data other than certified cost or pricing data.” The rule clarifies the existing authority for contracting officers to require certified cost or pricing data, and the existing requirements for submission of the various types of pricing data. The rule is required to eliminate confusion and misunderstanding, especially regarding the authority of the contracting officer to request data other than certified cost or pricing data when there is no other means to determine that proposed prices are fair and reasonable. Most significantly, the rule clarifies that data other than certified cost or pricing data may include the identical types of data as certified cost or pricing data but

without the certification. Because the rule clarifies existing requirements, it will have only minimal impact on the Government, offerors, and automated systems.

Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Materials (FAR Case 2009–008)

This final rule converts the interim rule published in the **Federal Register** at 74 FR 14623, March 31, 2009, to a final rule with changes. This final rule implements section 1605 of Division A of the American Recovery and Reinvestment Act (Recovery Act) of 2009. It prohibits the use of funds appropriated for or otherwise made available by the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605 mandates application of the Recovery Act Buy American requirement in a manner consistent with U.S. obligations under international agreements. Least developed countries continue to be treated as designated countries per congressional direction. Section 1605 also provides for waivers under certain limited circumstances.

Dated: August 18, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Amy G. Williams,

Acting Deputy Director, Defense Procurement and Acquisitions Policy (Defense Acquisition Regulations System).

Joseph A. Neurauter,

Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Sheryl J. Goddard,

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

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DEPARTMENT OF DEFENSE

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SPACE ADMINISTRATION**

48 CFR Parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52

[FAC 2005-45; FAR Case 2008-024; Item I; Docket 2010-0079, Sequence 1]

RIN 9000-AL51

**Federal Acquisition Regulation;
Inflation Adjustment of Acquisition—
Related Thresholds**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2010.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. For information pertaining to status or publication

schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-45, FAR case 2008-024.

SUPPLEMENTARY INFORMATION:

A. Background

The first review of acquisition-related thresholds to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) was conducted under FAR Case 2004-033 during FY 2005. The final rule for the first review was published in the **Federal Register** at 71 FR 57363, September 28, 2006. This is the second review of FAR acquisition-related thresholds. DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 5716, February 4, 2010. The preamble to the proposed rule contained a detailed explanation of—

- What an acquisition-related threshold is;
- What acquisition-related thresholds are not subject to escalation adjustment under this case;
- How the Councils analyze statutory and nonstatutory acquisition-related thresholds; and
- The effect of this rule on the most heavily-used thresholds.

Eight respondents submitted comments on the proposed rule, which are addressed in the following section. The final rule has been coordinated with the Department of Labor and the Small Business Administration in areas of the regulation for which they are the lead agency. Any changes to Cost Accounting Standards thresholds will be dealt with under a separate case.

B. Analysis of Public Comments

1. Statutory Thresholds

a. All Statutory Thresholds

Comment: One respondent, while recognizing that this is a statutory requirement, believed that no inflation adjustments should be made at this time. The respondent views the threshold increases as a way to reduce Government oversight of Federal contracts and considers such reduction unwise, because of various congressional oversight hearings and reports of Inspectors General and the Government Accountability Office that have revealed “widespread systemic gaps in Government contracting oversight.”

Response: As noted, this is a statutory requirement. Further, the intent is not to reduce Government oversight but to maintain the status quo, by adjusting thresholds to keep pace with inflation. If thresholds are not adjusted for inflation, the number of contracts

subject to the acquisition-related threshold will continue to grow, because more and more contracts will be below the stated thresholds.

b. Prime Contractor Subcontracting Plan Thresholds (FAR 19.702)

Comment: One respondent stated that they were particularly pleased with the proposal to increase the threshold values in FAR part 19 relative to the need to submit an acceptable subcontracting plan. They consider the current threshold to be administratively burdensome. The respondent further recommended that the Councils should pursue legislative action to raise the threshold to a minimum of one million dollars.

Another respondent recommended increasing the prime contractor subcontracting plan threshold to \$700,000, to be the same as the increased cost or pricing data threshold.

Response: The final rule raises the subcontracting threshold to \$650,000, as required by the law that this case is implementing. Pursuing legislative changes is outside the scope of this case.

c. Miller Act (FAR 28.102 and 52.228-15)

Comment: Three respondents addressed the proposed increase in the Miller Act threshold. These respondents emphasized the importance of performance and payment bonds as a protection for subcontractors and taxpayers.

- One respondent stated that the law is “an unfortunate and contradictory statutory requirement.” The respondent considered that the threshold increase will undermine the original protective purposes of the bonding requirements set forth in the Miller Act, because more Federal construction projects will be undertaken without the benefit of payment bond protection. In particular, this respondent noted that subcontractors are frequently small businesses, for whom lack of a payment bond may be disastrous. The respondent requested the Councils explain accurately to Congress the significant negative impact that such increases will have.

- Another respondent stated that the threshold increase is bad public policy, and the Councils should reconsider whether such thresholds are “acquisition-related thresholds” as contemplated by the Act.

- The third respondent urged the Councils not to increase the Miller Act surety bond threshold, but did not suggest rationale for noncompliance with the statutory requirement.