

the paperwork burden previously approved under OMB Control Number 9000-0173.

List of Subjects in 48 CFR Parts 15, 31, and 52

Government procurement.
Dated: November 24, 2010.

Millisa Gary,
Acting Director, Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

■ Accordingly, the interim rule amending 48 CFR parts 15, 31, and 52, which was published in the **Federal Register** at 74 FR 52853, October 14, 2009, is adopted as final with the following changes:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

- 2. Amend section 15.408 by—
- a. Removing from paragraph (n)(2)(i)(B)(2)(iii) the word “or”;
- b. Removing the period from the end of paragraph (n)(2)(i)(B)(2)(iv) and adding a semicolon in its place; and
- c. Adding paragraphs (n)(2)(i)(B)(2)(v) and (n)(2)(i)(B)(2)(vi) to read as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

- (n) * * *
- (2)(i) * * *
- (B) * * *
- (2) * * *

(v) A fixed-price incentive contract awarded on the basis of adequate price competition; or
(vi) A fixed-price incentive contract for the acquisition of a commercial item.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 5, 7, and 10

[FAC 2005-47; Item VII; Docket 2010-0110, Sequence 1]

Federal Acquisition Regulation; Technical Amendments

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

and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date:* December 13, 2010.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, 1275 First St., NE., Washington, DC 20417, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-47, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes amendments to the Federal Acquisition Regulation (FAR) in 48 CFR parts 3, 5, 7, and 10 for purposes of updating.

List of Subjects in 48 CFR Parts 3, 5, 7, and 10

Government procurement.
Dated: November 24, 2010.

Millisa Gary,
Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 5, 7, and 10 as set forth below:

■ 1. The authority citation for 48 CFR parts 3, 5, 7, and 10 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.104-1 [Amended]

■ 2. Amend section 3.104-1 by removing from the definition “Federal agency procurement,” in the second sentence, the word “innovative” and adding the word “innovation” in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.601 [Amended]

■ 3. Amend section 5.601 by removing from paragraphs (a), (b)(1), and (b)(2) “<http://www.contractdirectory.gov>” and adding “<http://www.contractdirectory.gov/contractdirectory/>” in its place.

PART 7—ACQUISITION PLANNING

7.105 [Amended]

■ 4. Amend section 7.105 by removing from paragraph (b)(1), in the second sentence, “<http://www.contractdirectory.gov>” and adding

“<http://www.contractdirectory.gov/contractdirectory/>” in its place.

PART 10—MARKET RESEARCH

10.002 [Amended]

■ 5. Amend section 10.002 by removing from paragraph (b)(2)(iv) “<http://www.contractdirectory.gov>” and adding “<http://www.contractdirectory.gov/contractdirectory/>” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010-0077, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-47; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005-47, which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been performed. Interested parties may obtain further information regarding these rules by referring to FAC 2005-47, which precedes this document. These documents are also 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. Please cite FAC 2005-47 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

LIST OF RULES IN FAC 2005–47

| Item | Subject | FAR Case | Analyst |
|-----------|--|----------|-----------|
| I | Notification of Employee Rights Under the National Labor Relations Act (Interim) | 2010–006 | McFadden. |
| *II | HUBZone Program Revisions | 2006–005 | Morgan. |
| III | Preventing Abuse of Interagency Contracts (Interim) | 2008–032 | Sakalos. |
| IV | Small Disadvantaged Business Self-Certification (Interim) | 2009–019 | Morgan. |
| V | Uniform Suspension and Debarment Requirement (Interim) | 2009–036 | Gary. |
| VI | Limitation on Pass-Through Charges | 2008–031 | Chambers. |
| VII | 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 number and subject set forth in the documents following these item summaries.

FAC 2005–47 amends the FAR as specified below:

Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR Case 2010–006) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (DoL). The Executive order requires contractors and subcontractors to post a notice that includes employee rights under the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self organize and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. This FAR interim rule establishes a new subpart 22.16, Notification of Employee Rights under the National Labor Relations Act. The rule also creates a new FAR clause 52.222–40, Notification of Employee Rights under the National Labor Relations Act. In addition, this rule revises the FAR clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244–6, Subcontracts for Commercial Items, to include the requirements of the new FAR clause 52.222–40. The required employee notice, “Notification of Employee Rights Under the National Labor Relations Act,” may be obtained from the DoL; downloaded from a DoL Web site; provided by the Federal contracting agency, if requested; or reproduced and used as exact duplicate copies of the DoL’s official poster (*see* FAR 52.222–40(c)). Contracting officers shall insert the clause at FAR 52.222–40,

Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

(1) Under the simplified acquisition threshold. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

A contracting agency may modify the clause at FAR 52.222–40, if necessary, to reflect an exemption granted by the Secretary of the Department of Labor (*see* 22.1603(b)).

Item II—HUBZone Program Revisions (FAR Case 2006–005)

This FAR final rule implements the Small Business Administration (SBA) final rule published in the **Federal Register** at 69 FR 29411 on May 24, 2004, and an interim rule published in the **Federal Register** at 70 FR 51243 on August 30, 2005, amending its HUBZone regulations at 13 CFR part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act of 2005, and other various policy changes. The FAR is amended to—

(1) Require a HUBZone small business concern to be a HUBZone small business concern both at the time of its initial offer and at the time of contract award;

(2) Require that HUBZone concerns provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility.

(3) *Allow waiver of the 50 percent requirement.* In accordance with 13 CFR 126.700, for general construction or construction by special trade contractors, a HUBZone small business concern must spend at least 50 percent of the cost of contract performance incurred for personnel on its own

employees or subcontract employees of other HUBZone small business concerns. This final rule amends FAR clause 52.219–3, Notice of Total HUBZone Set-Aside, and FAR clause 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, to include an Alternate I, to be used to waive the 50 percent requirement only after determining that at least two HUBZone small business concerns cannot meet the requirement. However, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

Item III—Preventing Abuse of Interagency Contracts (FAR Case 2008–032) (Interim)

This interim rule implements section 865 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009. FAR subpart 17.5 now addresses all interagency acquisitions, not just those made under the Economy Act authority. A new subsection 17.502–1 is added to require that all interagency acquisitions include a determination of best procurement approach. For an assisted acquisition between the servicing agency and the requesting agency, this subsection now requires a written agreement that establishes the general terms and conditions governing the relationship between the parties. Subsection 17.502–2 contains business-case analysis requirements when an agency wishes to establish a contract that would be used by other agencies. There is a statutory exception included in subpart 17.5 for orders of \$500,000 or less issued against Federal Supply Schedules.

Item IV—Small Disadvantaged Business Program Self-Certification of Subcontractors (FAR Case 2009–019) (Interim)

This interim rule amends the FAR by allowing small disadvantaged businesses (SDBs) to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities. This change implements revisions made by

the Small Business Administration (SBA) to its SDB regulations. This case only addresses the subcontracting status portion of the SBA final rule for Small Disadvantaged Business certification. The Small Disadvantaged Business certification for prime contracts will be addressed in a future rule. This change removes a cost of compliance burden on SDB subcontractors seeking SBA certification.

Item V—Uniform Suspension and Debarment Requirement (FAR Case 2009–036) (Interim)

This interim rule amends the FAR at parts 9 and 52 to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for the acquisition of commercially available off-the-shelf items, and in the case of contracts for the acquisition of commercial items, first-tier subcontracts only.

This requirement will protect the Government against contracting with entities at any tier who are suspended, debarred or proposed for debarment. This rule does not have a significant impact on the Government, contractors or any automated systems.

Item VI—Limitations on Pass-Through Charges (FAR Case 2008–031)

This final rule adopts the interim rule published in the **Federal Register** at 74 FR 52853, October 14, 2009, as a final rule with minor changes.

The interim rule amended the FAR to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110–417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109–364). This legislation required the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives

indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

Item VII—Technical Amendments

Editorial changes are made at FAR 3.104–1, 5.601, 7.105, and 10.002.

Dated: November 24, 2010.

Millisa Gary,

Acting Director, Acquisition Policy Division.

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