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48 CFR Chapter 1

Federal Acquisition Regulation; Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR 2014–0051, Sequence No. 4]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–76; 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 (Councils) in this Federal Acquisition Circular (FAC) 2005–76. 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 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 2005–76 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

**Rules Listed in FAC 2005–76**

Item	Subject	FAR case	Analyst
I .....	Equal Employment and Affirmative Action for Veterans and Individuals with Disabilities (Interim).	2014–013	Loeb.
II .....	Small Business Protests and Appeals .....	2012–014	Morgan.
III .....	Allowability of Legal Costs for Whistleblower Proceedings .....	2013–017	Chambers.
IV .....	Technical Amendments.		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–76 amends the FAR as specified below:

**Item I—Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities (FAR Case 2014–013)**

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement final rules issued on September 24, 2013, by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities. The DOL rules provide clarification of mandatory listing of employment openings, the posting of notices, making notices accessible to persons with disabilities, and requiring nondiscrimination statements in contractor solicitations or advertisements for employees. The FAR clauses have been restructured to provide a citation to the applicable clause in the DOL regulations and include a statement that summarizes the contractors’ top level obligations under each clause. There is no significant impact on small entities imposed by the FAR rules.

**Item II—Small Business Protests and Appeals (FAR Case 2012–014)**

This final rule amends the FAR to provide revised regulatory coverage for small business size and small business status protest and appeal procedures and to ensure that the FAR contains consistent and coherent protest and appeal procedures that are congruent with Small Business Administration regulations.

This final rule will have no direct negative impact on any small business concern, since it is aimed at preventing other than small business concerns from receiving or performing contracts set aside for small business concerns. This rule will indirectly benefit small business concerns by preventing awards to ineligible concerns, or shortening the length of time other than small business concerns perform small business set-aside contracts.

**Item III—Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013–017)**

This finalizes an interim rule that revised the cost principle at FAR 31.205–47 to implement sections 827(g) and 828(d) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. The

cost principle is revised in the final rule to allow reasonable legal proceeding costs in certain settlements. Because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal.

**Item IV—Technical Amendments**

Editorial changes are made at FAR 4.605, 4.1601, and 32.009–1. The change at 32.009–1 shows the recent extension of the policy to provide accelerated payment to small business subcontractors.

Dated: July 18, 2014.

**William Clark,**

*Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.*

Federal Acquisition Circular (FAC) 2005–76 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 2005–76 is effective July 25, 2014 except for item II, which is effective August 25, 2014.

Dated: July 18, 2014.

**Richard Ginman,**  
*Director, Defense Procurement and Acquisition Policy.*

Dated: July 18, 2014.

Jeffrey A. Koses,  
Senior Procurement Executive/Deputy  
CAO, Office of Acquisition Policy, U.S.  
General Services Administration.

Dated: July 21, 2014.

William P. McNally,  
Assistant Administrator for  
Procurement, National Aeronautics and  
Space Administration.

[FR Doc. 2014-17496 Filed 7-24-14; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 22, and 52

[FAC 2005-76; FAR Case 2014-013; Item  
I; Docket 2014-0013, Sequence 1]

RIN 9000-AM76

#### Federal Acquisition Regulation: Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities

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

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are  
issuing an interim rule amending the  
Federal Acquisition Regulation (FAR) to  
implement final rules issued by the  
Office of Federal Contract Compliance  
Programs at the Department of Labor  
(DOL) relating to equal opportunity and  
affirmative action for veterans and  
individuals with disabilities.

**DATES:** *Effective:* July 25, 2014.

*Comment Date:* Interested parties  
should submit written comments to the  
Regulatory Secretariat on or before  
September 23, 2014 to be considered in  
the formation of the final rule.

**ADDRESSES:** Submit comments  
identified by FAC 2005-76, FAR Case  
2014-013, by any of the following  
methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2014-013” Select the link “Comment Now” that corresponds with “FAR Case 2014-013.” Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2014-013” on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services

Administration, Regulatory Secretariat  
(MVCB), ATTN: Ms. Flowers, 1800 F  
Street NW., 2nd floor, Washington, DC  
20405.

*Instructions:* Please submit comments  
only and cite FAC 2005-76, FAR Case  
2014-013, in all correspondence related  
to this case. All comments received will  
be posted without change to <http://www.regulations.gov>, including any  
personal and/or business confidential  
information provided.

**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 2005-76, FAR  
Case 2014-013.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA are issuing an  
interim rule amending the FAR to  
implement two DOL final rules that  
were published in the **Federal Register**  
on September 24, 2013 at 78 FR 58614  
and at 78 FR 58682 as follows:

- “Affirmative Action and  
Nondiscrimination Obligations of  
Contractors and Subcontractors  
Regarding Special Disabled Veterans,  
Veterans of the Vietnam Era, Disabled  
Veterans, Recently Separated Veterans,  
Active Duty Wartime or Campaign  
Badge Veterans, and Armed Forces  
Service Medal Veterans”, which  
amended DOL regulations at 41 CFR  
parts 60-250 and 60-300 (78 FR 58614).

- “Affirmative Action and  
Nondiscrimination Obligations of  
Contractors and Subcontractors  
Regarding Individuals with  
Disabilities”, which amended DOL  
regulations at 41 CFR part 60-741 (78  
FR 58682).

##### II. Discussion and Analysis

###### A. Subpart 22.13—Equal Opportunity for Veterans

This interim rule amends the  
definitions in FAR subpart 22.13 to  
conform to the definitions in 41 CFR  
60-300.2.

- Adds a definition of “active duty  
wartime or campaign badge veteran,”  
which replaces the definition of “other  
protected veteran.” The only change is  
in the definition title.

- Adds a definition of “protected  
veteran.”

- Expands policy at FAR 22.1302 to  
address appropriate outreach and  
recruitment, and hiring benchmarks.

###### B. Subpart 22.14—Employment of Workers With Disabilities

The interim rule amends FAR subpart  
22.14 to conform to DOL regulations at  
41 CFR part 60-741.

- Changes references to the title of the  
FAR clause at 52.222-36 to “Equal  
Opportunity for Workers with  
Disabilities”.

- Changes the responsible official at  
DOL to the “Director of Federal Contract  
Compliance Programs” (Director of  
OFCCP).

- Expands policy at FAR 22.1401 to  
address appropriate outreach and  
recruitment, and utilization goals, as  
prescribed in the regulations of the  
Secretary of Labor.

- Amends the waiver authority at  
FAR 22.1403 to be the Director of the  
Office of Federal Contract Compliance  
Programs to conform to the Department  
of Labor regulations. Also revises the  
policy at FAR 22.1403(b) concerning  
national security waivers to conform to  
the DOL regulations.

###### C. Clauses

The DOL regulations contain two  
revised Equal Opportunity clauses at 41  
CFR 60-300.5 (relating to veterans) and  
41 CFR 60-741.5 (relating to individuals  
with disabilities).

- The clause for Equal Opportunity  
for VEVRRA Protected Veterans  
provides clarification of mandatory  
listing of employment openings and  
posting of notices, in paragraphs 2, 4, 9,  
and 12 of 41 CFR 60-300.5(a).

- The clause for Equal Opportunity  
for Workers with Disabilities adds some  
requirements with regard to posting in  
electronic format and making notices  
accessible to persons with disabilities,  
in paragraphs 4 and 7 of 41 CFR 60-  
741.5(a).

- Both clauses add requirements with  
regard to contractor solicitations or  
advertisements for employees, requiring  
inclusion of statements that all qualified  
applicants will receive consideration for  
employment, without regard to their  
protected veteran status; and that  
qualified applicants will not be  
discriminated against on the basis of  
disability.

At 41 CFR 60-300.5(d) and 41 CFR  
60-741.5(d), each entitled “Inclusion of  
the equal opportunity clause in the  
contract,” the DOL regulations provide  
that it is not necessary to include the  
equal opportunity clause verbatim in  
the contract (as had been considered in  
the proposed rule), but that the clause  
shall be made a part of the contract by  
citation to 41 CFR 60-300.5(a) and 41  
CFR 60-741.5(a) respectively, and then  
provides a short paragraph that must be