

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR-2021-0051, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2021-07; 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) 2021-07. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

RULES LISTED IN FAC 2021-07

Item	Subject	FAR Case	Analyst
I	Section 508-Based Standards in Information and Communication Technology	2017-011	Jackson.
II	Revision of Limitations on Subcontracting	2016-011	Uddowla.
III	Scope of Review by Procurement Center Representatives	2020-012	Jones.
IV	Good Faith in Small Business Subcontracting	2019-004	Bowman.
V	Technical Amendments.		

ADDRESSES: The FAC, including the SECG, is available via the internet at <https://www.regulations.gov>.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2021-07 amends the FAR as follows:

Item I—Section 508-Based Standards in Information and Communication Technology (FAR Case 2017-011)

This final rule amends the FAR to implement the Access Board’s final rule published January 17, 2017. Section 508 of the Rehabilitation Act of 1973 requires the FAR to incorporate revised accessibility standards developed by the Access Board for information and communication technology (ICT). The Access Board is also known as the Architectural and Transportation Barriers Compliance Board. This rule ensures that Federal employees with disabilities have comparable access to, and use of, such information and data relative to other Federal employees. Section 508 also requires Federal agencies to ensure that members of the public with disabilities have comparable access to publicly available information and data.

Item II—Revision of Limitations on Subcontracting (FAR Case 2016-011)

This rule amends the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published in the **Federal Register** at 81 FR 34243, on May 31, 2016. SBA’s final rule implements the statutory requirements of section 1651 of the National Defense Authorization Act for Fiscal Year 2013. Section 1651 revised and standardized the limitations on subcontracting, including the nonmanufacturer rule, that apply to small business concerns under FAR part 19 procurements. Section 1651 shifts the limitations on subcontracting from the concept of a required percentage of work to be performed by a prime contractor to the concept of a limit on the percentage of the overall award amount to be spent by the prime on subcontractors. Significantly, section 1651 excludes from this calculation the percentage of the award amount that the prime contractor spends on subcontractors who are similarly situated entities. This rule implements the revised and standardized limitations on subcontracting through the use of a single FAR clause for every small business program, instead of continuing to implement through multiple FAR clauses that were specific to a particular small business program. This rule also revises the FAR clause implementing the nonmanufacturer rule to reflect the

standardized requirements across all the small business programs.

This rule may have a positive economic impact on small businesses. Through the ability to meet the limitations by means of subcontracts with similarly situated entities, this rule will make it possible for small businesses to compete for larger contracts than they could in the past.

Item III—Scope of Review by Procurement Center Representatives (FAR Case 2020-012)

This final rule amends the FAR to implement section 1811 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), as implemented in the Small Business Administration (SBA) final rule published at 84 FR 65647 on November 29, 2019. Section 1811 allows SBA’s procurement center representatives to review any solicitation for a contract or task order, without regard to whether it is set aside for small business concerns, or reserved in the case of a multiple-award contract, or whether it would result in a bundled or consolidated contract or order.

Item IV—Good Faith in Small Business Subcontracting (FAR Case 2019-004)

This final rule amends the FAR to implement section 1821(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (15 U.S.C 637 note, Pub. L. 114-328), as implemented in the Small Business

Administration (SBA) final rule published at 84 FR 65647, dated November 29, 2019.

Specifically, the final FAR rule at FAR 19.705–7 includes examples of a good faith effort to comply with the subcontracting plan, and examples of a failure to make a good faith effort. Failure to make a good faith effort to comply with the plan may result in assessment of liquidated damages.

Additionally, the final rule amends the FAR to require that prime contractors with a commercial subcontracting plan include indirect costs in their subcontracting goals. Previously, prime contractors were required to include indirect costs in the summary subcontract report (SSR) but not in their subcontracting goals, which led to inconsistencies when comparing the SSR to the goals in the commercial subcontracting plan. Including indirect costs in both the SSR and subcontracting goals established in the commercial subcontracting plan will allow for consistency.

Item V—Technical Amendments

Editorial changes are made at FAR 42.709–1 through 42.709–7, 52.242–3, and 52.245–1.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2021–07 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2021–07 is effective August 11, 2021 except for Items I through V, which are effective September 10, 2021.

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[FR Doc. 2021–16362 Filed 8–10–21; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 2, 7, 10, 11, 12 and 39

[FAC 2021–07; FAR Case 2017–011; Item I; Docket No. FAR–2017–0011, Sequence No. 1]

RIN 9000–AN46

Federal Acquisition Regulation: Section 508–Based Standards in Information and Communication Technology

AGENCY: 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 incorporate recent revisions and updates to accessibility standards issued by the U.S. Access Board.

DATES: Effective September 10, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, or by email at michaelo.jackson@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2021–07, FAR Case 2017–011.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 85 FR 17831 on March 31, 2020, to implement the U.S. Access Board’s revisions by strengthening FAR requirements for accessibility to electronic and information technology (now generally referred to as “information and communication technology” or “ICT”) provided by the Federal Government. Among other things, section 508 of the Rehabilitation Act of 1973 mandates that Federal agencies “develop, procure, maintain, or use” ICT in a manner that ensures that Federal employees with disabilities have comparable access to, and use of, such information and data relative to Federal employees who are not individuals with disabilities. Section 508 also requires Federal agencies to ensure that members of the public with disabilities have comparable access to, and use of, information and data relative

to members of the public who are not individuals with disabilities.

The Access Board, also known as the Architectural and Transportation Barriers Compliance Board, is tasked with issuing accessibility standards for ICT covered under section 508, and updating these standards periodically to reflect technological changes. The Federal Acquisition Regulatory Council, in turn, is required to revise the FAR to incorporate the Access Board’s accessibility standards or any amendments thereto.

In December 2000, the Access Board published its initial set of accessibility standards at 65 FR 80500, (December 21, 2000). Thereafter, a final FAR rule was published incorporating the Access Board’s accessibility standards at 66 FR 20894 (April 25, 2001).

The Access Board completed a multiyear effort to “refresh” its initial, existing set of accessibility standards under section 508 to address advances in ICT, harmonize with accessibility standards developed by standards organizations worldwide, and ensure consistency with the Access Board’s regulations that had been promulgated since the late 1990s. The revised section 508 Accessibility Standards support the access needs of individuals with disabilities, while also considering the costs of procuring ICT that complies with section 508.

The Access Board’s final rule was published in the **Federal Register** at 82 FR 5790 on January 18, 2017. This final rule updates the FAR to ensure that the updated standards are appropriately considered in Federal ICT acquisitions. The final rule includes a “safe harbor” provision for existing (*i.e.*, legacy) ICT, which considers legacy ICT in existence on or before January 18, 2018, to be compliant if it meets the earlier standard issued pursuant to section 508 of the Rehabilitation Act of 1973 (see E202.2 of Revised Standards) and the legacy ICT is not altered after January 18, 2018. In other words, such “untouched” ICT need not be modified or upgraded to conform to the revised 508 standards as long as it already conforms to the original 508 standards. However, ICT acquired on or before January 18, 2018, will need to be upgraded or modified to conform to the new standard if such ICT is altered after January 18, 2018, or does not comply with the original 508 standards. In addition, ICT acquired after January 18, 2018, must be upgraded or modified to conform to the new standard. The upgrades and modifications would be included in requirements documents issued by the agency.