

FAR Update Alert

Issuance of Federal Acquisition Circulars 2005-56 & 2005-57

This *FAR Update Alert*, prepared by the Federal Acquisition Regulatory Council (FAR Council), highlights rules published in two recently released Federal Acquisition Circulars: 2005-56 (published March 2, 2012, 77 FR 12912) and 2005-57 (published March 7, 2012, 77 FR 13952).¹ This *Alert* is designed to help improve general awareness of regulatory activities within the acquisition workforce.

We have included hyperlinks so those that need more information will have it at their fingertips. We encourage acquisition managers and policy officials to disseminate this *Alert* widely across their acquisition workforce.²

Actions Highlighted in this Alert

Reducing High Risk Contracting

- Proper Use and Management of Cost-Reimbursement Contracts
- Requirements for Acquisitions Pursuant to Multiple-Award Contracts

Small Business

- Women-Owned Small Business(WOSB) Program
- Socioeconomic Program Parity

Other

- Trade Agreements Thresholds
- New Designated Country (Armenia) and Other Trade Agreements Updates
- Government Property

¹ The FAR Council is seeking to improve awareness within the acquisition workforce of its regulatory activities and take greater advantage of new learning resources to supplement existing learning tools. As a first step, the FAR Council plans to release periodic *FAR Update Alerts* to inform the acquisition workforce of recent regulatory actions involving the Federal Acquisition Regulation (FAR). In addition, in the coming months, we plan to host a webinar that will provide us with an opportunity to share the FAR Council's perspective on a regulatory topic of current interest. You will receive a separate alert as the date gets closer.

² We are also looking at various ways in which this and other information might be disseminated directly to the workforce. With the assistance of the Federal Acquisition Institute, this notice is being distributed through the Federal Acquisition Institute Training Application System (FAITAS). If you are receiving this alert directly from FAITAS, please note that this communication is not intended as a substitute for training materials or guidance that your agency may provide in connection with the release of FAR rules. You should continue to direct inquiries about rules through the normal channels that your agency has established for FAR-related matters.

Rules at a Glance

Proper Use and Management of Cost-Reimbursement Contracts

[Final Rule, Effective April 2, 2012, FAR Case 2008-030](#)

This rule is designed to strengthen guidance regarding the use of cost-reimbursement contracts with a particular focus on: (1) circumstances when cost-reimbursement contracts are appropriate, (2) acquisition plan findings to support the selection of a cost-reimbursement contract, and (3) acquisition resources necessary to award and manage a cost-reimbursement contract. The rule finalizes an interim rule that requires:

- documentation in the acquisition plan or contract file to explain why the particular contract type was selected, how the government will manage and mitigate risk, and how the government will minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and transition to firm-fixed-price contracts to the maximum extent practicable;
- the contracting officer to consider whether or not a portion of the contract can be firm-fixed price if the entire contract cannot be firm-fixed-price;
- approval of the acquisition plan (where one is required) for other than firm-fixed-price contracts at least one level above the contracting officer; and
- designation of a properly trained contracting officer's representative prior to award of the contract or order (the rule also discusses COR duties).

Effective implementation of the actions outlined in this final rule will help agencies to better manage and mitigate the risks associated with cost-reimbursement contracts, consistent with the objectives of the President's March 2009 Memorandum on Government Contracting.

Requirements for Acquisitions Pursuant to Multiple-Award Contracts

[Final Rule, Effective April 2, 2012, FAR Case 2007-012](#)

This rule adopts as final, with changes, an interim rule that amended the FAR to enhance competition in the purchase of property and services under multiple-award contracts, including Federal Supply Schedules (FSS), blanket purchase agreements (BPAs) created under FSS contracts, and orders under BPAs. With respect to BPAs, the interim rule created a preference for multiple-award BPAs, rather than single-award BPAs, generally molded after the preference for multiple-award task-and delivery-order contracts, and established competition requirements for placing orders under multiple-award BPAs. The final rule adopts the interim rule with two changes. First, it requires an FSS ordering activity to conduct appropriate analysis and document the file to determine price reasonableness when placing an order under a blanket purchase agreement (BPA) with hourly rate services. Second, the rule removes a requirement for an ordering activity's competition advocate to approve a contracting officer's annual review of a

single-award BPA prior to exercise of an option to extend the term of the BPA, which was considered overly restrictive on the use of FSS single-award BPAs.

Women-Owned Small Business (WOSB) Program

[Final Rule, Effective April 2, 2012, FAR Case 2010-015](#)

This final rule adopts an interim rule, with minor changes, that authorizes (through use of set-asides) agencies to restrict competition for Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which SBA has determined that women-owned small businesses (WOSBs) are underrepresented in Federal procurement. Agencies may include eligible WOSBs, in addition to EDWOSBs, in their set asides for the 83 identified NAICS codes in industries where WOSBs are not just underrepresented, but substantially underrepresented.

Agencies may only set-aside requirements that are in the identified NAICS codes found in the excel spreadsheet, *WOSB Program Applicable NAICS Codes*, located here:

<http://www.sba.gov/content/contracting-opportunities-women-owned-small-businesses>. This program does not allow sole-source contracts and has a dollar threshold on the anticipated award price of the contract of \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing; or \$4 million, for all other contracts. See SBA's *Contracting Officer's Guide to the WOSB Program* for additional guidance on using the WOSB Program here:

<http://www.sba.gov/sites/default/files/files/Contracting%20Officers%20WOSB%20Compliance%20Guide%20Jan2011.pdf>.

Socioeconomic Program Parity

[Final Rule, Effective April 2, 2012, FAR Case 2011-004](#)

This final rule adopts with changes an interim rule that clarified that there is no order of precedence among the small business socioeconomic programs (8(a) Business Development Program (8(a)), Historically Underutilized Business Zones (HUBZone) Program, Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, or the Women-Owned Small Business (WOSB) Program). Contracting officers may exercise discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a), HUBZone, SDVOSB, or the WOSB Program.

Trade Agreements Thresholds

[Final Rule, Effective March 2, 2012, FAR Case 2012-002](#)

This final rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative.

New Designated Country (Armenia) and Other Trade Agreements Updates

[Final Rule, Effective March 2, 2012, FAR Case 2011-030](#)

This final rule allows contracting officers to purchase the goods and services of the new designated country, Armenia, without application of the Buy American Act if the acquisition is covered by the World Trade Organization Government Procurement Agreement. It also updates the lists of countries that are party to the Agreement on Trade in Civil Aircraft.

United States--Korea Free Trade Agreement

[Interim Rule, Effective March 15, 2012, FAR Case 2012-004](#)

This rule, which will be effective on March 15, 2012, implements the United States--Korea Free Trade Agreement. The Republic of Korea is a trading partner under WTO GPA, but this agreement gives Korea access to procurements at a lower threshold (\$100,000).

Government Property

[Final Rule, Effective April 2, 2012, FAR Case 2010-009](#)

This final rule amends the FAR to clarify reporting, reutilization, and disposal of Government property and the contractor requirements under the Government property clause.