

FAR Update Alert
Issuance of Proposed Rules and Federal Acquisition Circular 2005-65 and 2005-66

This *FAR Update Alert*, prepared by the Federal Acquisition Regulatory Council (FAR Council), is designed to help improve general awareness of regulatory activities within the acquisition workforce. This *Alert* highlights notable proposed rules recently published for public comment and interim and final rules¹ published in the released Federal Acquisition Circular (FAC): 2005-65 and 2005-66.

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

Actions Highlighted in this Alert

Proposed Rules published from March through May 2013

- **Small Business Protests and Appeals**; 78 FR 14746; published on 3/7/2013 and the comment period closed on 5/6/2013.
- **Defense Base Act**; 78 FR 17176; published on 3/20/2013, and the comment period closed on 5/20/2013.
- **Commercial and Government Entity Code**; 78 FR 23194; published on 4/18/2013, and the comment period closed on 6/17/2013.
- **Irrevocable Letters of Credit**; 78 FR 26573, published on 5/7/2013, and the comment period closes on 7/8/2013.

FAC 2005-65 (published on January 29, 2013)

Prohibition on Contracting with Inverted Domestic Corporations

- Prohibits the award of contracts using Fiscal Year (FY) 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity.

Extension of Sunset Dates for Protests of Task and Delivery Orders

- Extends the sunset date for protests against awards of task and delivery orders to 9/30/2016.

Free Trade Agreement-Colombia

- Implements the United States—Colombia Trade Promotion Agreement.

Unallowability of Costs Associated with Foreign Contractor Excise Tax

- States that no funds are to be disbursed to any foreign contractor in order to reimburse a 2% excise tax imposed on certain Federal procurement payments to foreign persons.

FAC 2005-66 (published on February 28, 2013)

Definition of Contingency Operation

- Expands the definition to include responding to a major disaster or emergency, which will increase the circumstances under which agencies may raise the micropurchase and simplified acquisition thresholds.

Changes to Time-and-Materials and Labor-Hour Contracts and Orders

- Implements a policy that provides additional guidance to address actions required when raising the ceiling price for a time-and-materials (T&M) or labor-hour (LH) contract or order or otherwise changing the general scope of a T&M or LH contract or order.

Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items

- Extends the authority of the Commercial Item Test Program at FAR subpart 13.5 to 01/01/2015.

¹Proposed rules announce future changes being considered to the Code of Federal Regulations (CFR), include proposed regulatory text, and solicit public comments. Interim rules announce immediate changes to the CFR, include the regulatory text, solicit public comments and are effective immediately upon publication, or on a specified date after publication, but may be amended. Final rules make permanent changes to the FAR after considering public comment, if the rule was earlier published as a proposed or interim rule. Final rules are effective on a specified date after publication.

Rules at a Glance

Proposed Rules

FAR Case 2012-014, Small Business Protests and Appeals, [78 FR 14746](#); published on 3/7/2013. This rule will update the small business size and small business status protest and appeal procedures, protest and appeal timeframes, and address the application of the Small Business Administration's decisions on a protested concern's size and other small business status determinations.

FAR Case 2012-016, Defense Base Act (DBA), [78 FR 17176](#); published on 3/20/2013. This rule will clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act as extended by the DBA.

FAR Case 2012-024, Commercial and Government Entity Code (CAGE), [78 FR 23194](#), published on 4/18/2013. This rule will require the use of CAGE codes, including North Atlantic Treaty Organization CAGE codes for foreign entities, for awards valued at greater than the micro-purchase threshold.

FAR Case 2011-023, Irrevocable Letters of Credit, [78 FR 26573](#), published on 5/7/2013. This rule will remove all references to Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit, and also provide updated sources of data required to verify the credit worthiness of a financial entity issuing or confirming an irrevocable letter of credit.

FAC 2005-65 published on January 29, 2013, pages 78 FR 6183-6185

FAR Case 2012-013, Prohibition on Contracting with Inverted Domestic Corporations - This final rule implemented section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), which prohibits the award of contracts using FY 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity.

FAR Case 2012-007, Extension of Sunset Date for Protests of Task and Delivery Orders - This final rule implements section 825 of the Ike Skelton National Defense Authorization Act (NDAA) for FY 2011 (Pub. L. 111-383) and section 813 of the NDAA for FY 2012 (Pub. L. 112-81). These statutes extend the sunset date for protests against awards of task and delivery orders to September 30, 2016.

FAR Case 2012-012, Free Trade Agreement-Colombia - This final rule implements the United States—Colombia Trade Promotion Agreement which provides for mutually non-discriminatory treatment of eligible products and services from Colombia.

FAR Case 2011-011, Unallowability of Costs Associated with Foreign Contractor Excise Tax - This final rule implements certain requirements of section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010. First, the statute disallows the cost of the 2 percent excise tax on certain foreign procurements as part of a payment, or as part of a cost-based negotiated price. Second, the statute stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed.

FAC 2005-66 published on February 28, 2013, pages 78 FR 13763-13764

FAR Case 2013-003, Definition of Contingency Operation - This interim rule amends the contingency operation definition in FAR 2.101 to expand the definition to include responding to a major disaster or emergency as required by paragraph (b) of section 515 of the FY 2012 NDAA (Pub. L. 112-081).

FAR Case 2011-025, Changes to Time-and-Materials and Labor-Hour Contracts and Orders - This final rule provides additional guidance to address actions required when raising the ceiling price for a time-and-materials (T&M) or labor-hour (LH) contract/order or otherwise changing the general scope of a T&M or LH contract /order.

FAR Case 2013-007, Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items - This final rule amends the FAR to implement section 822 of the NDAA for FY 2013. Section 822 extends the authority of the Commercial Item Test Program at FAR subpart 13.5 to January 1, 2015.