FAR Update Alert
Issuance of Proposed Rules and Federal Acquisition Circular 2005-61, 62, 63, and 64

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 rules[1] published in the released Federal Acquisition Circular (FAC): 2005-61, 2005-62, 2005-63, and 2005-64.

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

Documenting Contractor Performance
- requires the use of uniformed past performance evaluation factors and rating categories and that information be entered into the Contractor Performance Assessment Reporting System (CPARS).

Positive Law Codification of Title 41
- conform references throughout the FAR to the new Positive Law Codification of Title 41, United States Code, ''Public Contracts.''

Accelerated Payments to Small Business Subcontractors
- implements Office of Management and Budget (OMB) Policy Memorandum M-12-16, dated July 11, 2012, by adding a new clause to provide for the accelerated payments to small business subcontractors.

FAC 2005-61

United States—Korea Free Trade Agreement
- implements the United States—Korea Free Trade Agreement (FTA)

Delete Outdated FAR Reference to the Department of Defense (DoD) Industrial Preparedness Program
- deletes obsolete references to the "DoD Industrial Preparedness Program"

North American Industry Classification System (NAICS) and Size Standards
- clarifies that new NAICS codes are not available for use in Federal contracts until the Small Business Administration publishes corresponding industry size standards

Bid Protest and Appeal Authorities
- clarifies bid protest and appeal authorities

FAC 2005-62

Updates to Contract Reporting and Central Contractor Registration
- clarifies the appropriate use of Data Universal Numbering System (DUNS) Numbers, updates policies on reporting into the Federal Procurement Data System (FPDS), and revises clauses for Central Contractor Registration (CCR) and DUNS Number reporting

Interagency Acquisitions: Compliance by Nondefense Agencies with Defense Procurement Requirements
- requires compliance certifications by non-defense agencies that purchase on behalf of DoD, and clarifies which DoD laws and regulations apply

Free Trade Agreement—Panama
- implements the United States—Panama Trade Promotion Agreement

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[1]Proposed 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 based in response to an urgent cause. Final rules make permanent changes to the FAR after considering public comment on proposed or interim rules and are effective on a specified date after publication.

Rules at a Glance

Proposed Rules
FAR Case 2012-009, Documenting Contractor Performance, published on September 6, 2012, 77 FR 54864
This proposed rule intends to amend the FAR to include governmentwide standardized past performance evaluation factors and performance rating categories and requires that past performance information be entered into CPARS.

FAR Case 2011–018, Positive Law Codification of Title 41, published on September 18, 2012, 77 FR 57950-57979
The proposed rule will update all FAR references to Title 41 to the new Positive Law Codification of Title 41, United States Code, ''Public Contracts.''

FAR Case 2012-031, Accelerated Payments to Small Business Subcontractors, published on December 19, 2012
The proposed rule establishes a new FAR clause in FAR Part 52 that will allow for the payment of accelerated payments to small business subcontractors. This clause will require the prime contractor, upon receipt of accelerated payments from the Government, to make accelerated payments to small business subcontractors, to the maximum extent practicable, after receipt of a proper invoice and all proper documentation from small business subcontractors.

FACs
FAC 2005-61 published on September 13, 2012, 77 FR FAC 61 56737-56744
United States Korea Free Trade Agreement, *FAR Case 2012-004*
This final rule implements the United States-Korea FTA. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement, but this agreement implements a lower procurement threshold.

Delete Outdated FAR Reference to the DoD Industrial Preparedness Program, *FAR Case 2012-026*
This final rule deletes references to the obsolete "DoD Industrial Preparedness Program".

NAICS and Size Standards, *FAR Case 2012-021*
This final rule clarifies that new NAICS codes are not available for use in Federal contracting until the Small Business Administration (SBA) publishes corresponding industry size standards which are available on SBA's Web site. Other corresponding changes were also made.

Bid Protest and Appeal Authorities, *FAR Case 2012-008*
This final rule amends FAR part 33 to clarify that there are other Federal court related protest authorities and dispute-appeal authorities that are not covered by FAR part 33.

FAC 2005-62 published on November 20, 2012, 77 FR 69713 -69727
Updates to Contract Reporting and Central Contractor Registration, *FAR Case 2010-014*
This final rule provides guidance on the use of generic numbers instead of DUNS numbers, and updates the policies and procedures associated with reporting in the FPDS.

Interagency Acquisitions: Compliance by Nondefense Agencies with Defense Procurement Requirements, *FAR Case 2012-010*
This interim rule implements the requirements of section 801 of the National Defense Authorization Act for Fiscal Year 2008 and adds new requirements specific to the acquisition of supplies and services by nondefense agencies on behalf of the DoD.

Free Trade Agreement—Panama, *FAR Case 2012-027*
This interim rule implements a new FTA with Panama, see the United States—Panama Trade Promotion Agreement Implementation Act. This agreement provides for mutually non-discriminatory treatment of eligible products and services from Panama.

FAC 2005-63 published on December 10. 2012, 77 FR 73515-73521
Iran Threat Reduction, *FAR Case 2012-030*
This interim rule requires certifications that implement the expansion of sanctions relating to the energy sector of Iran and sanctions with respect to Iran's Revolutionary Guard Corps, as contained in Titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012.

FAC 2005-64 published on December 21, 2012, FR 75765 -75780
Nondisplacement of Qualified Workers Under Service Contracts, *FAR Case 2011-028*
This final rule implements Executive order 13495, Nondisplacement of Qualified Workers Under Service Contracts, as implemented in Department of Labor regulations at 29 CFR part 9. A correction notice, important for implementation of the rule, was published on January 15, 2013 (78 FR 2893) to change a paragraph reference in the Applicability Date section of the December 21st notice.