



Weekly Report for January 16, 2017

GOVERNMENT CONTRACTS

Federal Acquisition Regulation; Federal Acquisition Circular 2006-95

This Federal Acquisition Circular provides a summary presentation of final rules issued by the Department of Defense (“DOD”), the General Services Administration (“GSA”) and National Aeronautics and Space Administration and agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council. The Small Entity Compliance Guide for these final rules can be found [here](#).

Item I – Uniform Use of Line Items (FAR Case 2013-014)

This final rule amends the Federal Acquisition Regulation (“FAR”) to establish standards for the uniform use of line items in Federal procurement. These standards are designed to improve the accuracy, traceability, and usability of procurement data. The implementation of these standards will facilitate the identification and traceability of spending from appropriation through expenditure, supporting automated collection of information using key identifiers. The implementation date for FAR 4.1002 through 4.1008 will be October 1, 2019. The requirements in the rule have the potential to impact any entity, small or large, that does business with the Federal Government because the proposed rule would apply to purchases of items, including commercial items and commercially available off-the-shelf items, and purchases under the simplified acquisition threshold. Any small business that contracts with a Federal agency could be impacted to at least some extent. This final rule takes effect on January 13, 2017. [82 Fed. Reg. 4709](#).

Item II – Acquisition Threshold for Special Emergency Procurement Authority (FAR Case 2016-004)

This final rule amends the FAR by increasing the simplified acquisition threshold (“SAT”) for special emergency procurement authority from \$300,000 to \$750,000 within the United States, and from \$1 million to \$1.5 million outside the United States, for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This change implements Section 816 of the National Defense Authorization Act (“NDAA”) for Fiscal Year 2016 (Pub. L. 114-92). This rule provides contracting officers with more flexibility when contracting in support of contingency operations. This final rule takes effect on January 13, 2017. [82 Fed. Reg. 4716](#).

Item III – Contractor Employee Internal Confidentiality Agreements or Statements (FAR Case 2015-012)

This final rule revises the FAR to implement section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act of 2015 (Pub. L. 113-235) and successor provisions in subsequent appropriations acts. Section 743 prohibits the use of funds appropriated or otherwise made available by Division E or any other act for a contract with an entity that requires employees and subcontractors of such entity to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse, to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency office of the Inspector General). This final rule takes effect on January 19, 2017. [82 Fed. Reg. 4717](#).

Item IV – Contracts under the Small Business Administration 8(a) Program (FAR Case 2012-022)

This final rule amends the FAR to implement clarifications made by the Small Business Administration (“SBA”) in its final rule, which were published in the Federal Register at 76 Fed. Reg. 8222 on February 11, 2011. This final rule clarifies in the FAR the procedures and requirements used when contracting under the 8(a) program. Clarifications include the evaluation, offering, and acceptance process, procedures for acquiring SBA's consent to procure an 8(a) requirement outside the 8(a) program, and the impact of exiting the 8(a) program in terms of the firm's ability to receive future 8(a) requirements and its current contractual commitments. This final rule takes effect on January 13, 2017. [82 Fed. Reg. 4724](#).

Item V – Prohibition on Reimbursement for Congressional Investigations and Inquiries (FAR Case 2015-016)

This rule amends the FAR to implement section 857 of the Carl Levin and Howard P. ‘Buck’ McKeon NDAA for Fiscal Year 2015. Section 857 imposes additional requirements relative to the allowability of costs incurred by a contractor in connection with a congressional investigation or inquiry. Contracting officers need to be aware of these new restrictions on certain costs, which cannot be charged under contracts. Although small businesses subject to FAR part 31 will need to maintain accounting records, this rule does not place any new requirements on small entities. This final rule takes effect on January 13, 2017. [82 Fed. Reg. 4732](#).

General Services Administration Acquisition Regulation (GSAR); Fair Opportunity Complaints on GSA Contracts

The GSA is issuing a final rule amending the General Services Administration Acquisition Regulation part 552, Solicitation Provisions and Contract Clauses at 552.216-74 Task and Delivery Orders. The final rule clarifies (1) that the jurisdiction and responsibility to review and resolve fair opportunity complaints placed against GSA multiple-award contracts lies with the ordering-agency task and delivery order Ombudsman; (2) requires the ordering agency to include contact information for their task and delivery order Ombudsman when placing task or delivery orders against GSA multiple-award contracts; and (3) requires the contractor to provide a copy of its

complaint to the GSA Procurement Ombudsman for informational purposes, at the same time the contractor files its complaint to the ordering agency for action. This final rule took effect on January 9, 2017. [82 Fed. Reg. 2249](#).

Updating Regulations Issued Under the Fair Labor Standards Act, Service Contract Act, Davis-Bacon and Related Acts, Contract Work Hours and Safety Standards Act, the Family and Medical Leave Act, Employee Polygraph Protection Act, and the Migrant and Seasonal Agricultural Worker Protection Act

This final rule by the Department of Labor (“DOL”) revises regulations issued pursuant to the Fair Labor Standards Act of 1938, the Davis-Bacon and Related Acts, the Service Contract Act, Contract Work Hours and Safety Standards Act, Family and Medical Leave Act (“FMLA”), Employee Polygraph Protection Act, and the Migrant and Seasonal Agricultural Worker Protection Act that include reference to the “Employment Standards Administration” (“ESA”) at the DOL. The ESA was eliminated as part of agency reorganization in 2009 and its authorities and responsibilities were devolved into its constituent components, including the Wage and Hour Division (“WHD”). This action deletes reference to the ESA in the regulations administered by WHD. Additionally, this action updates Office of Management and Budget (“OMB”) control numbers associated with information collections in the appropriate regulations. WHD was assigned new control numbers by OMB and this action updates those references in the regulations to the current corresponding OMB control number. Further, this action updates cross-references that were not revised in the FMLA final rule published February 25, 2015. This final rule took effect on January 9, 2017. [82. Fed. Reg. 2221](#).

Extension of Policy to Provide Accelerated Payment to Small Businesses and Small Business Subcontractors

This memorandum further extends to December 31, 2017 the temporary policy requiring agencies to accelerate payments to all prime contractors in order for them to provide prompt payment to their small business subcontractors, and modifies the reporting instructions. Beginning with the October 1, 2016 through December 31, 2016 quarterly reporting period, agencies should provide three-month reports to the OMB on (1) the agency’s progress in making accelerated payments to all prime contractors, to the full extent permitted by law, pursuant to the temporary, transitional policy established by OMB Memorandum M-12-16 and designed to expedite contractor payments to small business subcontractors; (2) the agency’s progress in making accelerated payments to small business prime contractors, to the full extent permitted by law, pursuant to the policy established by OMB Memorandum M-11-32; and (3) the progress of any other steps that the agency has undertaken to ensure that small business contractors and small business subcontractors are paid in a prompt manner. The memorandum can be found [here](#).

National Industrial Security Program

The Information Security Oversight Office of the National Archives and Records Administration has proposed to revise the National Industrial Security Program (“NISP”) Directive. The NISP safeguards classified information the Federal Government or foreign governments release to contractors, licensees, grantees, and certificate holders.

This proposed rule adds provisions incorporating executive branch insider threat policy and minimum standards, identifies the Office of the Director of National Intelligence and the Department of Homeland Security as new cognizant security agencies (“CSA”), and adds responsibilities for all CSAs and non-CSA departments and agencies (to reflect oversight functions that are already detailed for private sector entities in the National Industrial Security Program Operating Manual (“NISPOM”). The proposed revisions also make other administrative changes to be consistent with recent revisions to the NISPOM and with updated regulatory language and styles. Comments are due on, or before, February 10, 2017. [82 Fed. Reg. 3219](#).

SMALL BUSINESS COMMITTEE

“House Passes Small Business Regulatory Reform Measure.”

The U.S. House of Representatives has passed Small Business Committee Chairman Steve Chabot’s (R-OH) measure to force federal regulators to craft smarter, less burdensome regulations that take into consideration their direct and reasonably foreseeable indirect economic effects, especially on small businesses. Chabot’s bill, introduced last week as the Small Business Regulatory Flexibility Improvements Act of 2017, passed the House as Title III of H.R. 5, the Regulatory Accountability Act. The Bill can be found [here](#).

“Chabot Backs House Move to Protect Small Biz from FCC Internet Takeover.”

House Small Business Committee Chairman Steve Chabot hailed House passage of [H.R. 288](#), the Small Business Broadband Deployment Act. This legislation exempts small businesses from burdensome new Internet regulations imposed by President Obama’s Federal Communications Commission (“FCC”) for five years. The measure also increases the number of small businesses that can use the exemption from the FCC’s “Open Internet Order,” commonly known as “net neutrality.”

“HALOS Act Wins Bipartisan Support, Advances to U.S. Senate.”

The U.S. House has passed Small Business Committee Chairman Chabot’s bipartisan legislation to help startup companies access early capital. [H.R. 79](#), the Helping Angels Lead Our Startups Act, was passed by a vote of 344 to 73. The bill, which now moves to the U.S. Senate for consideration, builds on a provision of the 2012 JOBS Act by allowing angel investor groups established by local governments, non-profits, universities and other organizations to host events designed to let entrepreneurs showcase their work and connect with potential backers.

OTHER NEWS

“Chaffetz’s New Bill Targets Feds, Contractor Tax Debts.” *Federal Times*, January 11, 2017. Retrieved from <http://www.federaltimes.com>.

Rep. Jason Chaffetz (R-UT) plans to tackle more than \$1 billion in unpaid taxes by federal civilian employees with a “mix of the sweet and bitter.” The House Oversight

and Government Reform Committee chairman's new bill—H.R. 396, the Tax Accountability Act—would address delinquent tax bills by contractors by requiring contractors and “individuals applying for federal employment” to certify their tax status when applying for work. If the contractor or grant applicant has a heavy delinquent tax debt, they wouldn't be eligible for the contract and could face suspension or debarment. The Utah congressman noted stark debts from the contracting community, which he said owed more than \$7 billion in back taxes spread across more than 63,000 defense, agency and GSA contractors. A text of this bill has not yet been published.

“House Continues Pursuit of Regulatory Roll-Back Bills.” *Government Executive*, January 6, 2017. Retrieved from <http://www.govexec.com>.

Maintaining their push to take authority away from regulatory agencies, House Republicans on January 5, 2017, passed a long-sought bill that would require both chambers in Congress to approve any major new rule within 70 legislative days for it to take effect. The Regulations from the Executive in Need of Scrutiny Act ([H.R. 26](#)), a bill pursued for several years and re-introduced in the first week of the 115th Congress by Rep. Doug Collins (R-GA) would apply to rules deemed to impose \$100 million or more in economic impact. Prospects for quick passage in the Senate are problematic, judging by past resistance and the greater need for bipartisanship.