

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016–0051, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–91; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and 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) 2005–91. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

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. Please cite FAC 2005–91 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–91

Item	Subject	FAR case	Analyst
I	Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction	2015–011	Davis.
II	Updating Federal Contractor Reporting of Veterans' Employment	2015–036	Delgado.
III	Non-Retaliation for Disclosure of Compensation Information (Interim)	2016–007	Delgado.
IV	Sole Source Contracts for Women-Owned Small Businesses	2015–032	Uddowla.
V	Unique Identification of Entities Receiving Federal Awards	2015–022	Delgado.
VI	Consolidation and Bundling	2014–015	Uddowla.
VII	Amendment Relating to Multi-year Contract Authority for Acquisition of Property	2016–006	Jackson.
VIII	New Designated Countries—Ukraine and Moldova	2016–009	Davis.
IX	Contractors Performing Private Security Functions	2014–018	Jackson.
X	Limitation on Allowable Government Contractor Employee Compensation Costs	2014–012	Hopkins.
XI	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–91 amends the FAR as follows:

Item I—Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction (FAR Case 2015–011)

DoD, GSA, and NASA are adopting as final, without change, an interim rule, which amended the FAR to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015. The rule prohibits the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

This final rule will not have a significant economic impact on a substantial number of small entities.

Item II—Updating Federal Contractor Reporting of Veterans' Employment (FAR Case 2015–036)

DoD, GSA, and NASA are adopting as final, without change, an interim rule amending the FAR to implement a final rule issued by the Department of Labor's Veterans' Employment and Training Service (VETS) that revised the regulations at 41 CFR part 61 implementing the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), as amended and the Jobs for Veterans Act (JVA) (Pub. L. 107–288). VEVRAA requires Federal contractors and subcontractors to annually report on the total number of their employees who belong to the categories of veterans protected under VEVRAA, as amended by the JVA, and the total number of those protected veterans who were hired during the period covered by the report. The VETS rule requires contractors and subcontractors to comply with its revised reporting requirements using the Form VETS–4212, in lieu of the VETS–100 and VETS–100A, beginning with the annual report filed in 2015.

There is no significant impact on small entities imposed by the FAR rule.

Item III—Non-Retaliation for Disclosure of Compensation Information (FAR Case 2016–007) (Interim)

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement Executive Order (E.O.) 13665, Non-Retaliation for Disclosure of Compensation Information, amending Executive Order 11246, Equal Opportunity in Federal Employment. The E.O. was signed April 8, 2014. The interim rule is also implementing the final rule issued by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (DOL) to implement the E.O. The DOL final rule was published in the **Federal Register** at 80 FR 54934, on September 11, 2015, entitled Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions.

E.O. 11246, originally issued September 24, 1965, establishes nondiscrimination and affirmative action obligations in employment for Federal contractors and subcontractors. It prohibits employment discrimination because of race, color, religion, sex, sexual orientation, gender identity, and national origin. E.O. 13665 amends E.O. 11246 and its Equal Opportunity Clause by incorporating, as a covered

prohibition, discriminating against employees and job applicants who inquire about, discuss, or disclose the compensation of the employee or applicant or another employee or applicant. Federal contractors and subcontractors must disseminate this nondiscrimination provision, using language prescribed by the Director of OFCCP, including incorporating the provision into existing employee manuals or handbooks and posting it. There is no significant impact on small entities imposed by the FAR rule.

Item IV—Sole Source Contracts for Women-Owned Small Businesses (FAR Case 2015–032)

DoD, GSA, and NASA are adopting as final, with a minor edit, an interim rule that amends the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule as published in the **Federal Register** at 80 FR 55019, on September 14, 2015. SBA's final rule implements the statutory requirements of paragraph (a)(3) of section 825 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Public Law 113–291, which grants contracting officers the authority to award sole source contracts to economically disadvantaged women-owned small business (EDWOSB) concerns and to women-owned small business (WOSB) concerns eligible under the WOSB Program. The anticipated price, including options, must not exceed \$6.5 million for manufacturing North American Industry Classification System (NAICS) codes, or \$4 million for other NAICS codes.

This rule may have a positive economic impact on women-owned small businesses.

Item V—Unique Identification of Entities Receiving Federal Awards (FAR Case 2015–022)

DoD, GSA, and NASA are issuing a final rule amending the FAR to redesignate the terminology for unique identification of entities receiving Federal awards. The change to the FAR eliminates references to the proprietary Data Universal Numbering System (DUNS®) number, and provides appropriate references to the Web site where information on the unique entity identifier used for Federal contractors will be located. The Government does not intend to move away from the use of the DUNS® number in the short term. This final rule also establishes definitions of “unique entity identifier”, and “electronic funds transfer (EFT) indicator”. There is no significant

impact on small entities imposed by the FAR rule.

Item VI—Consolidation and Bundling (FAR Case 2014–015)

This final rule incorporates regulatory changes made by the SBA in its final rule which published in the **Federal Register** at 78 FR 61113 on October 2, 2013, concerning consolidation and bundling. SBA's final rule implements sections 1312 and 1313 of the Small Business Jobs Act of 2010 (Pub. L. 111–240), as well as section 1671 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239). The FAR final rule adds coverage on consolidations and reorganizes coverage on bundling at FAR 7.107. Before conducting a consolidated acquisition estimated to exceed \$2,000,000, the Senior Procurement Executive or Chief Acquisition Officer must make a written determination that the consolidation is necessary and justified. This rule may have a positive economic impact on any small business entity that participates in the Federal procurement arena.

Item VII—Amendment Relating to Multi-Year Contract Authority for Acquisition of Property (FAR Case 2016–006)

DoD, GSA, and NASA are amending FAR subpart 17.1 to implement section 811 of the NDAA for FY 2016 (Pub. L. 114–92). Section 811 amended subsection (a)(1) of 10 U.S.C. 2306b by striking “substantial” and inserting “significant”. This rule makes conforming changes at FAR 17.105–1(b)(1) to state that the head of an agency may enter into a multi-year contract for supplies, if the use of such a contract will result in significant savings of the total estimated costs of carrying out the program through annual contracts. This change applies to the DoD, NASA, and the Coast Guard.

This final rule is not required to be published for public comment, because it addresses an internal decision by the contracting officer to enter into a multi-year contract for supplies if certain objects are met. These requirements affect only the internal operating procedures of the Government.

Item VIII—New Designated Country—Ukraine and Moldova (FAR Case 2016–009)

This final rule amends the FAR to add Ukraine and Moldova as new designated countries under the World Trade Organization Government Procurement Agreement (WTO GPA). This final rule has no significant impact on the

Government and contractors, including small business entities.

Item IX—Contractors Performing Private Security Functions (FAR Case 2014–018)

This final rule amends FAR 25.302 and the clause at 52.225–26, both entitled “Contractors Performing Private Security Functions Outside the United States.”

This rule removes the DoD-unique requirements, which have been incorporated in the Defense Federal Acquisition Regulations Supplement (DFARS). This rule also adds the definition of “full cooperation” to FAR clause 52.225–26 in order to affirm that the contract clause does not foreclose any contractor rights arising in law, the FAR, or the terms of the contract when cooperating with any Government-authorized investigation into incidents reported pursuant to the clause.

This rule will not create any new reporting, recordkeeping, or other compliance requirements. The impact of this rule on small business is not expected to be significant.

Item X—Limitation on Allowable Government Contractor Employee Compensation Costs (FAR Case 2014–012)

This final rule converts the interim rule published in the **Federal Register** at 79 FR 35865 on June 24, 2014 to a final rule with minor changes including a table summarizing the employee compensation limits and applicability dates is added at 31.205–6(p); several paragraphs are reorganized; redundant text is removed; reference links are added for clarity.

This final rule amends the Federal Acquisition Regulation (FAR) to implement section 702 of the Bipartisan Budget Act of 2013. Section 702 revises the allowable compensation cost limit for contractor and subcontractor employees to be \$487,000, as adjusted annually to reflect the change in the Employment Cost Index for all workers as calculated by the Bureau of Labor Statistics. Also, section 702 allows for the narrowly targeted exceptions to this allowable cost limit for scientists, engineers or other specialists, upon an agency determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities. Because most contracts awarded to small businesses use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, the impact of this compensation limitation on small businesses will be minimal.

Item XI—Technical Amendments

Editorial changes are made at FAR 1.603–1, 4.1400, 22.805, 23.704, 26.103, and 52.234–1.

Dated: September 19, 2016.

William F. Clark,

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

Federal Acquisition Circular (FAC) 2005–91 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–91 is effective September 30, 2016 except for items V, VI, VII, VIII, and IX, which are effective October 31, 2016.

Dated: September 20, 2016.

Claire M. Grady,

Director, Defense Procurement and Acquisition Policy.

Dated: September 20, 2016.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: September 20, 2016.

William G. Roets,

Acting Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 4, 9, 12, and 52**

[FAC 2005–91; FAR Case 2015–011; Item I; Docket No. 2015–0011, Sequence No. 1]

RIN 9000–AN05

Federal Acquisition Regulation; Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without changes, an interim rule amending the Federal Acquisition Regulation (FAR) to

implement sections of the Consolidated and Further Continuing Appropriations Act, 2015, to prohibit the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

DATES: *Effective:* September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–91, FAR Case 2015–011.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 80 FR 75903 on December 4, 2015, to implement sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and section 523 of Division B of the same act. Three respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments are provided as follows:

A. Summary of Public Comments

There were no changes made in the final rule as a result of the three public comments.

B. Analysis of Public Comments**1. Need for the Rule**

Comment: Two respondents expressed support for the interim rule. According to the respondents, this rule will facilitate more rigorous scrutiny of companies with a recent Federal conviction or unpaid Federal taxes and will help ensure that Federal contractors conduct themselves with the highest degree of integrity and honesty.

Response: Noted.

Comment: The other respondent said the rule is unnecessary, given the existing statutory and regulatory framework. This respondent noted that tax and criminal statutes already include penalties for tax delinquency

and felony conviction, such as the Internal Revenue Code (title 26) and the Criminal Code (title 18). Furthermore, the respondent noted that the FAR already includes Federal tax delinquency and criminal malfeasance as causes for debarment. The respondent stated that agencies already reliably utilize suspension and debarment processes.

Response: This rule is necessary to implement the requirements of sections 744 and 745 of Division E, title VIII of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, as well as section 523 of Division B, title V of the same act (affects Commerce, Justice, NASA, and some related agencies). These appropriations act restrictions, although having some overlap with existing laws, have specific provisions that are not identical to existing laws and regulations, and must be implemented in order to avoid misuse of appropriated funds.

2. Meaning of “Corporation”

Comment: One respondent requested clarification as to what entities are and are not corporations for the purposes of this rule. The respondent stated that the term “corporation” could encompass C corporations, S corporations, and limited liability corporations (LLCs), among others. The respondent is concerned that if the rule applies to LLCs and S corporations, through which tax liability falls at the individual rather than the corporate level, that failure of one shareholder to pay taxes could adversely affect all shareholders. Likewise, the respondent is concerned how the rule would be applied if a shareholder or member of the entity is convicted of a felony.

The respondent is also concerned about how this rule applies to a joint venture and teaming. First, can a corporation avoid disclosure of a felony conviction if it becomes a member of a joint venture? Second, if the joint venture is a corporate entity, are the underlying entities that make up the joint venture required to disclose tax delinquencies and felonies?

Response: No change is made. The term “corporation” is used throughout the FAR without definition. If a term is used in the FAR without definition, then it has the standard dictionary definition. A corporation is a legal entity that is separate and distinct from the entities that own, manage, or control it. It is organized and incorporated under the jurisdictional authority of a governmental body, such as a State or the District of Columbia. The law does not specify any particular type of