



# FEDERAL REGISTER

---

Vol. 77

Friday,

No. 42

March 2, 2012

---

Part II

Department of Defense

---

General Services Administration

---

National Aeronautics and Space Administration

---

48 CFR Chapter I

Federal Acquisition Regulations; Final Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2012-0080, Sequence 1]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-56; Introduction**

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

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of 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) 2005-56. 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 and comment dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005-56 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

**LIST OF RULES IN FAC 2005-56**

Item	Subject	FAR Case	Analyst
I .....	Women-Owned Small Business (WOSB) Program .....	2010-015	Morgan
II .....	Proper Use and Management of Cost-Reimbursement Contracts .....	2008-030	Clark
III .....	Requirements for Acquisitions Pursuant to Multiple-Award Contracts .....	2007-012	Clark
IV .....	Socioeconomic Program Parity .....	2011-004	Morgan
V .....	Trade Agreements Thresholds .....	2012-002	Davis
VI .....	New Designated Country (Armenia) and Other Trade Agreements Updates .....	2011-030	Davis
VII .....	Government Property .....	2010-009	Glover
VIII .....	Technical Amendments.		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005-56 amends the FAR as specified below:

**Item I—Women-Owned Small Business (WOSB) Program (FAR Case 2010-015)**

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 76 FR 18304 on April 1, 2011, which provides a tool to assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small businesses. This case is based on the Small Business Administration's (SBA) regulations establishing the Women-Owned Small Business (WOSB) Program, authorized under section 8(m) of the Small Business Act (15 U.S.C. 637(m)).

Agencies may restrict competition to Economically Disadvantaged Women-Owned Small Business (EDWOSB) concerns, for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which SBA has determined that WOSBs are underrepresented in Federal procurement. For NAICS code industries where WOSBs are not just underrepresented, but substantially underrepresented, agencies may restrict

competition to either EDWOSB concerns or to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

This rule may positively affect EDWOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are underrepresented and may positively affect WOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are substantially underrepresented.

**Item II—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008-030)**

This final rule amends the FAR to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), enacted on October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting. Section 864 of the law requires amending the FAR to address the use and management of

cost-reimbursement contracts in the following three areas:

1. Circumstances when cost-reimbursement contracts are appropriate.
  2. Acquisition plan findings to support the selection of a cost-reimbursement contract.
  3. Acquisition resources necessary to award and manage a cost-reimbursement contract.
- This rule does not impose any information collection requirements on small business. There is no significant impact on small businesses because this rule is only applicable to internal operating procedures of the Government.

**Item III—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007-012)**

This final rule adopts, with changes, an interim rule published in the **Federal Register** at 76 FR 14548 on March 16, 2011, that amended the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 863 requires the FAR to be amended to enhance competition in the purchase of property and services by all executive agencies pursuant to multiple-award contracts (including Federal Supply Schedules (FSS)). This final rule 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. The final rule also removes the 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. This should benefit contractors because it removes a requirement that is considered to be a restriction on the use of FSS single-award BPAs.

#### **Item IV—Socioeconomic Program Parity (FAR Case 2011–004)**

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 76 FR 14566 on March 16, 2011, which implemented section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240). Section 1347(b) clarifies that there is no order of precedence among the small business socioeconomic programs. The FAR interim rule clarified the existence of socioeconomic parity and that contracting officers may exercise discretion when determining whether an acquisition will be restricted to small businesses participating in the 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. This final rule may have a positive impact on small businesses as it presents the maximum practicable opportunity for small business concerns qualified under the socioeconomic programs to participate in the performance of contracts, and assist Federal agencies in meeting each of the Government's small business contracting goals.

#### **Item V—Trade Agreements Thresholds (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, according to a formula set forth in the agreements. The threshold changes do not have significant cost or administrative impact, because they maintain the status quo by keeping pace with inflation.

#### **Item VI—New Designated Country (Armenia) and Other Trade Agreements Updates (FAR Case 2011–030)**

This final rule allows contracting officers to purchase the goods and services of 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. This rule has no significant impact on small business concerns.

#### **Item VII—Government Property (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. The proposed rule was published on April 4, 2011 (76 FR 18497).

The rule specifically impacts contracting officers and contractors by clarifying disposal of Government property. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small business.

#### **Item VIII—Technical Amendments**

Editorial changes are made at FAR 19.812, 42.203, and 52.209–9.

Dated: February 21, 2012.

##### **Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Federal Acquisition Circular (FAC) 2005–56 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 2005–56 is effective March 2, 2012, except for Items I, II, III, IV, and VII which are effective April 2, 2012.

Dated: February 17, 2012.

##### **Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: February 15, 2012.

##### **Mindy S. Connolly, CPCM,**

*Chief Acquisition Officer, U.S. General Services Administration.*

Dated: February 15, 2012.

##### **William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2012–4457 Filed 3–1–12; 8:45 am]

**BILLING CODE 6820–EP–P**

## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53**

[FAC 2005–56; FAR Case 2010–015; Item I; Docket 2010–0015, Sequence 1]

RIN 9000–AL97

### **Federal Acquisition Regulation; Women-Owned Small Business (WOSB) Program**

**AGENCIES:** 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, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's regulations establishing the Women-Owned Small Business (WOSB) Program. This rule authorizes the restriction of competition for Federal contracts in certain industries to economically disadvantaged women-owned small business (EDWOSB) concerns or WOSB concerns eligible under the WOSB Program.

**DATES:** *Effective Date:* April 2, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–56, FAR Case 2010–015.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 18304 on April 1, 2011, to implement the Small Business Administration (SBA) regulations at 13 CFR part 127 and the procedures authorized under section 8(m) of the Small Business Act, Public Law 85–536, (15 U.S.C. 637(m)). Seven respondents submitted comments on the interim rule. All respondents expressed support for the WOSB Program; however, some revisions to the WOSB Program were recommended. This final rule incorporates changes made in response to public comments as well as minor technical corrections.