

Dated: April 30, 2015.

William Clark,

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

Federal Acquisition Circular (FAC) 2005–82 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 2005–82 is effective May 7, 2015 except for items II and III, which are effective June 8, 2015.

Dated: April 29, 2015.

RADM Althea H. Coetzee,
Acting Director of Defense Procurement and Acquisition Policy

Dated: May 1, 2015.

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

Dated: April 28, 2015.

William P. McNally,
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, 22, and 52

[FAC 2005–82; FAR Case 2014–013; Item I; Docket 2014–0013, Sequence 1]

RIN 9000–AM76

Federal Acquisition Regulation: Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities

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 change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement final rules issued by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and

affirmative action for veterans and individuals with disabilities.

DATES: *Effective:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–82, FAR Case 2014–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 79 FR 43575 on July 25, 2014, to implement two DOL final rules that were published in the **Federal Register** on September 24, 2013, at 78 FR 58614 and at 78 FR 58682 as follows:

- “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans,” which amended DOL regulations at 41 CFR parts 60–250 and 60–300 (78 FR 58614).
- “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities,” which amended DOL regulations at 41 CFR part 60–741 (78 FR 58682).

II. Discussion and Analysis

No public comments were submitted, and no changes have been made to the interim rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Both rules issued by the DOL were determined to be economically

significant under E.O. 12866, and major rules under 5 U.S.C. 804. The Regulatory Impact Analysis for these rules was published in the **Federal Register** on September 24, 2013 at 78 FR 59643 and at 78 FR 58714. The FAR rule adds no new information collections, recordkeeping, or other compliance burdens. The FAR rule cites to the DOL Office of Management and Budget (OMB) Control numbers 1250–0004 and 1250–0005 for OMB approval under the Paperwork Reduction Act for any information collection requirements associated with revised FAR 52.222–35 (Equal Opportunity for Veterans) and 52.222–36 (Equal Opportunity for Workers with Disabilities). The FAR clauses, to be incorporated in solicitations and contracts in full text, include the required summary statement (paragraph (b) and (a) of each of the FAR clauses, respectively) and then reference to the DOL clauses. There is no economic impact arising from the FAR rule, since the FAR rule only informs the contractors of the requirements of the DOL rules. Further, each DOL rule states that “By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract. . . .” (41 CFR 60–300.5(e) and 60–741.5(e)). The FAR is not imposing requirements; it is incorporating the requirements into contracts to inform contractors.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 604, *et seq.* The FRFA is summarized as follows:

This final rule is being issued to implement changes to 41 CFR 60–25, 60–300, and 60–741, as published in the **Federal Register** on September 24, 2013 (78 FR 58614 and 58682), by the Office of Federal Contract Compliance Programs of the Department of Labor (DOL). The DOL rules revise the current regulations implementing 38 U.S.C. 4211 and 4212, and the nondiscrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. The DOL rules add requirements on mandatory job listings, data collection, and establishing hiring benchmarks.

There were no public comments submitted in response to the initial regulatory flexibility analysis.

With regard to equal opportunity for veterans, DOL estimated that the approximate number of small entities that would be subject to its rule would be 20,490 Federal contractors with between 50 and 500 employees (approximately 44% of Federal contractors may be impacted).

With regard to equal opportunity for individuals with disabilities, DOL estimated that its rule impacts 20,490 Federal contractors with between 50 and 500 employees (approximately 44% of Federal contractors may be impacted).

This FAR rule does not add any new reporting, recordkeeping, or other compliance burdens. The FAR rule makes contracting officers and contractors aware of the DOL requirements.

DoD, GSA, and NASA are not aware of any significant alternatives which would accomplish the stated objectives of implementing the DOL final rules, while minimizing impact on small entities. DoD, GSA, and NASA do not have the flexibility of changing the DOL rules, which have been published for public comment and are in effect as final rules. There is no significant impact on small entities imposed by the FAR rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved for the DOL regulations under OMB Control Numbers 1250-0004, OFCCP Recordkeeping and Reporting Requirements—38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; 1250-0005, OFCCP Recordkeeping and Reporting Requirements—Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 703; and 1293-0005, Federal Contractor Veterans' Employment Report, VETS-100/VETS-100A.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: April 30, 2015.

William Clark,

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

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 1, 22, and 52, which was published in the **Federal Register** at 79 FR 43575 on July 25, 2014, is adopted as a final rule without change.

[FR Doc. 2015-11028 Filed 5-6-15; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005-82; FAR Case 2013-012; Item II; Docket No. 2013-0012; Sequence No. 1]

RIN 9000-AM57

Federal Acquisition Regulation; Review and Justification of Pass-Through Contracts

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. This section provides additional requirements relative to the review and justification of pass-through contracts.

DATES: *Effective:* June 8, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy J. Hopkins, Procurement Analyst, at 202-969-7226 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-82, FAR Case 2013-012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 79 FR 39361 on July 10, 2014 to implement section 802 of the NDAA for FY 2013 (Pub. L. 112-239) which provided for additional requirements relative to the review and justification of pass-through contracts. Specifically, in those instances where an offeror for a contract, task order, or delivery order informs the agency pursuant to FAR 52.215-22 of its intention to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, section 802 requires the contracting officer to (1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work; (2) make a written determination that the contracting approach selected is in the

best interest of the Government; and (3) document the basis for such determination. These statutory requirements are being implemented in FAR 15.404-1(h). For consistency, this rule is applicable to all of the agencies subject to the FAR, even though section 802 only applied to the Department of Defense, the Department of State, and the United States Agency for International Development. Contract actions under section 46 of the Small Business Act (15 U.S.C. 657s) are exempt from the requirements under section 802 of the NDAA for FY 2013.

Two respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

This final rule makes two changes from the proposed rule. The first change revises FAR 15.404-1(h)(2) to make clear that competition requirements still apply if the contracting officer selects alternative approaches. The second change revises FAR 15.404-1(h)(3) to clarify that the requirements of this rule do not apply to small business set-aside contracts.

B. Analysis of Public Comments

The Regulatory Secretariat Division received responses from two respondents to the proposed rule which are discussed below:

1. Application of Rule to FAR Part 36

Comment: One respondent requested that the final rule ensure that this new requirement take into consideration the requirements found in FAR 36.501, which addresses performance of work by prime construction contractors.

Response: The statute does not exempt the contracting officer from making a written determination that the contracting approach selected is in the best interest of the Government under FAR part 36 acquisitions. The contracting officer shall take into consideration industry practices in making this determination.

2. Conflict With FAR 52.219-14

Comment: One respondent stated that FAR clause 52.219-14, Limitations on Subcontracting, could also conflict with the new requirements of this rule.