

CONTRACTING NEWS TO NOTE  
Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from July 1, 2010 through July 31, 2010 to the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). Where applicable, other acquisition related information is also provided.

If you are interested in more information on any of these subjects, the source document is referenced. FACs can be accessed at <http://www.acqnet.gov/far/index.html> , DFARS Change Notices at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>, and all proposed, final, and interim rules are published in the Federal Register at <http://www.gpoaccess.gov/fr/index.html>.

<b>FAR CHANGES</b>			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2008-011	A final rule has been issued to revise FAR part 45, Government Property, and its associated clauses. A proposed rule was published in the Federal Register (FR) on Aug. 6, 2009 to clarify and corrects the previous FAR rule for part 45, Government Property, published under FAC 2005-17, on May 15, 2007. Sixteen respondents submitted 106 comments on this proposed change. The comments received were grouped under 31 general topics. A discussion of the comments and the changes to the rule as a result of these comments are provided in the FR. Anyone who would like to review the details of these documents can find them at: <a href="http://edocket.access.gpo.gov/2010/2010-15918.htm">http://edocket.access.gpo.gov/2010/2010-15918.htm</a> .	Aug. 2, 2010	FAC 2005-43
2008-023	A final rule was issued to clarify the criteria that need to be met in order to conduct a sole source Service-Disabled Veteran-Owned Small Business (SDVOSB) concern acquisition. A proposed rule was published on May 19, 2009. The final rule contains language that more closely mirrors the Veterans Benefit Act of 2003 (15 U.S.C. 657f). The final rule revises the language in FAR 19.1306(a)(1), which deals with sole source awards to Historically Underutilized Business Zone (HUBZone) small business concerns based on 15 U.S.C. 657a(b), to match the language in FAR 19.1406(a)(1) to alleviate confusion on the appropriate use of the criteria needed to conduct a sole source SDVOSB concern acquisition.	Aug. 2, 2010	FAC 2005-43
2005-43	An interim rule published Oct. 14, 2009 has been adopted as final without change, to implement the Department of Homeland Security Appropriations Act, 2007, section 697, which requires the establishment and maintenance of a registry of disaster response contractors.	Aug. 2, 2010	FAC 2005-43

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<b>FAR CHANGES (Cont'd)</b>			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-040	An interim rule was published to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula under the agreements. On Dec. 29, 2009 the United States Trade Representative established new procurement thresholds that were published that became effective on January 1, 2010. (NOTE: USD AT&L issued a memo on this matter Jan. 14, 2010 – See Contracting News to Note January 2010.)	Jul. 2, 2010 Comments by Aug. 31, 2010	FAC 2005-43
2010-008	An interim rule was issued to revise the clause at FAR 52.204-11. This interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009. This change will require first-tier subcontractors with Recovery Act funded awards of \$25,000 or more, to report jobs information to the prime contractor for reporting into <a href="http://FederalReporting.gov">http://FederalReporting.gov</a> . It also will require the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.	Jul. 2, 2010 Comments by Aug. 31, 2010	FAC 2005-43
2008-039	An interim rule was issued to implement section 2 of the Federal Funding Accountability and Transparency Act of 2006, as amended by section 6202 of the Government Funding Transparency Act of 2008, which was enacted to reduce “wasteful and unnecessary spending,” and required the Office of Management and Budget (OMB) to establish a free, public, website containing full disclosure of all Federal contract award information. This rule will require contractors to report executive compensation and first-tier subcontractor awards on contracts expected to be \$25,000 or more, except classified contracts, and contracts with individuals.	Jul. 8, 2010 Comments by Sep. 7, 2010	FAC 2005-44
2010-008	A revision to FAC 2005-43 was issued to correct a typographical error in the clause 52.204-11 American Recovery and Reinvestment Act--Reporting Requirements.	Jul. 23, 2010 (no change in comment date)	FAC 2005-43 Correction

<b>PROPOSED FAR CHANGES</b>			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
	None		

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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-D033	An interim rule was issued to amend the DFARS to implement section 820 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111-84, enacted October 28, 2009). The new statute requires DoD contracting officers to publish a notification “consistent with the requirements” of FAR 10.001(c)(2) on FedBizOpps.gov, or any successor site, at least 30 days prior to the release of a solicitation for a bundled acquisition. In addition, if the DoD agency has determined that “measurably substantial benefits are expected to be derived as a result of bundling,” the notification must include a brief description of those benefits.	Jul. 13, 2010 Comments by Sep. 13, 2010	Change Notice 20100713
2009-D036	Another interim rule amending the DFARS was issued to implement section 814 of the NDAA for FY 2010. Sec. 814 prohibits the award of a sole-source task or delivery order that is estimated to exceed \$100 million (including all options) unless the head of the agency makes one of four prescribed determinations in writing. Section 814 requires agency heads to notify the congressional defense committees within 30 days after making any such determinations.	Jul. 13, 2010 Comments by Sep. 13, 2010	Change Notice 20100713
2009-D020	A third interim rule was issued to amend the DFARS to bring DoD into compliance with OMB implementation of the Prompt Payment Act by exempting military contingencies, and certain payments related to emergencies and the release or threatened release of hazardous substances. This rule implements the full authority granted by 5 CFR 1315.1 for payments covered by 5 CFR 1315.1(b)(2) that are either certified for payment in an operational area, or are contingent upon the receipt of necessary supporting documentation (i.e., contract, invoice, receiving report) emanating from an operational area. This law exempts Prompt Payment Act compliance for payments related to emergencies; contingency operations; and the release/threatened release of hazardous substances.	Jul. 13, 2010 Comments by Sep. 13, 2010	Change Notice 20100713
N/A	DoD also issued a technical amendment to the DFARS to correct the date of DFARS clause 252.222-7006.	Jul. 13, 2010	Change Notice 20100713

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<b>PROPOSED DFARS REGULATIONS</b>			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
	None		

<b>OTHER CHANGES, NOTICES, AND MEMORANDA</b>		
DESCRIPTION	DATE	SOURCE
The Department of Energy (DOE) published a proposed rule to remove its Contract Appeals regulation, which implements DOE's contract appeals procedures and amend the Department of Energy Acquisition Regulation (DEAR) Subchapters A--General, B--Acquisition Planning, and C--Contracting Methods and Contract Types, to make changes to conform to the FAR, remove out-of-date coverage, and update references.	Jul. 1, 2010 Comment by Aug. 2, 2010	Federal Register
The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD AT&L) issued a memorandum which outlines the integration of e-Business tools across the DoD contracting and finance communities that creates the system architecture necessary to achieve federal American Recovery and Reinvestment Act (ARRA) reporting compliance. The full memo can be found at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA007033-09-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA007033-09-DPAP.pdf</a>	Jul. 8, 2010	USD AT&L
A memo was issued to remind all agencies and contracting officers of the importance of assigning Procurement Instrument Identification Numbers (PIINS) and Supplemental PIINS in accordance with DFARS 204.70. Current business systems across DoD have each developed methods of indexing contracts independently leading to data integrity problems between data sources. The intent of this memorandum is to eliminate this confusion by establishing a uniform contract indexing methodology across DoD. The full text of the memo is located at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA003653-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA003653-10-DPAP.pdf</a>	Jul. 8, 2010	USD AT&L
A memo was issued entitled "Wide Area Workflow Database Clean-Up." The purpose is to streamline and improve response times for DoD's invoicing and receipt/acceptance system by initiating an active database clean-up effort. This memo authorizes the first round of systematic elimination of all aged and erroneous documents in the active database prior to July 30, 2009. The components will receive a full listing of aged documents prior to the cleanup effort and will have the opportunity to specify if select documents should not be eliminated. The entire memo is found at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA001428-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA001428-10-DPAP.pdf</a> .	Jul. 8, 2010	USD AT&L

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OTHER CHANGES, NOTICES, AND MEMORANDA (cont'd)		
DESCRIPTION	DATE	SOURCE
Current business systems across DoD have each developed methods of indexing contracts independently leading to data integrity problems between data sources. A memo entitled “Contract Indexing Standard” was issued to eliminate confusion by establishing a uniform contract indexing methodology across DoD. This memorandum is located at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA003088-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA003088-10-DPAP.pdf</a> .	Jul. 8, 2010	USD AT&L
A memo was issued on “Revised Posting and Reporting Requirements for the American Recovery and Reinvestment Act of 2009 (Recovery Act).” This memorandum is to update the DPAP instructions for required use of federal Integrated Acquisition Environment (IAE) capabilities to ensure all recovery funds are documented appropriately for these changes. The memo is found at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA003576-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA003576-10-DPAP.pdf</a> .	Jul. 9, 2010	USD AT&L
The Federal Contracting Oversight and Reform Act was introduced in the House “To improve the management and oversight of Federal contracts, and for other purposes.” If passed, it would require more control of contractors, partly by using information technology, and would consolidate nine separate federal databases of contract information into a single searchable and linked network. The bill also would give all members of Congress, instead of a select few, access to the Federal Awardee Performance and Integrity Information System, which contains performance information on companies. The General Services Administration’s inspector general would be charged with testing whether giving contractors identifying numbers would help in tracking them, according to the bill. The study would determine whether the system of numbers works sufficiently and if the model is feasible for keeping following companies that do business with the government. The full text of the bill is located at: <a href="http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.5726">http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.5726</a> :	Jul. 13, 2010	H.R.5726.IH
GAO issued a report entitled “Defense Acquisitions: Missile Defense Program Instability Affects Reliability of Earned Value Management Data.” By law, GAO is directed to assess the annual progress the Missile Defense Agency (MDA) made in developing and fielding the Ballistic Missile Defense System (BMDS). GAO issued its latest assessment of MDA’s progress covering FY 2009 in Feb. 2010. This report supplements that assessment to provide further insight into MDA’s prime contractor performance for FY 2009. GAO’s analysis of contractor EVM data included examining contract performance reports for 14 BMDS contracts, reviewing the latest integrated baseline reviews, performing extensive analysis of data anomalies, and conducting interviews with Defense Contract Management Agency (DCMA) officials—the independent reviewers of MDA contractor EVM systems. The full report can be found at: <a href="http://www.gao.gov/new.items/d10676.pdf">http://www.gao.gov/new.items/d10676.pdf</a> .	Jul. 14, 2010	GAO 10-676

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<b>OTHER CHANGES, NOTICES, AND MEMORANDA (Cont'd)</b>		
DESCRIPTION	DATE	SOURCE
The General Services Administration (GSA) is amending the Federal Management Regulation (FMR) by amending the provisions for the sale of personal property through Federal Asset Sales (FAS) Sales Centers. This proposed amendment to part 102-38 of the FMR updates policy pursuant to the transfer of the oversight of the Federal Asset Sales program from GSA's Office of Governmentwide Policy to GSA's Federal Acquisition Service. Due to this transfer, and the incorporation of these practices into the way the Government sells its property, references to the Executive Steering Committee, Planning Office and the eFAS acronym are proposed to be removed. Among other changes, it clarifies that contractor inventory may be disposed of by the contractor when required by the Federal contract (section 102-38.40.)	Jul. 14, 2010 Comments by Aug. 13, 2010	Federal Register
GSA amended the GSA Acquisition Regulation (GSAR) to update GSAR Part 516, Types of Contracts. GSAR part 516 has been revised to add and/or clarify policy pertaining to requirements for types of contracts. The proposed rule was published in the FR on July 9, 2008 and comments received and considered in the final rule.	Jul. 15, 2010 Effective Aug. 16, 2010	Federal Register
USD AT&L issued a memo entitled "Deployment of Subcontract Reporting Requirements for the Federal Funding Accountability and Transparency Act (FFATA)" The FFATA established a requirement to collect award data on all subcontracts valued at \$25,000 or more. On July 8, 2010, the FAR was changed to incorporate an interim rule establishing implementation requirements for contract actions. Prime contractors are now required to report subcontract awards to the FFATA Sub-award Reporting System (FSRS). This memorandum is to communicate the requirements to the components and provide instructions to enable smooth implementation. The full memo can be found at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA003934-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA003934-10-DPAP.pdf</a> .	Jul. 15, 2010	USD AT&L

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<b>OTHER CHANGES, NOTICES, AND MEMORANDA (Cont'd)</b>		
DESCRIPTION	DATE	SOURCE
<p>GAO issued a report entitled “Defense Management: DOD Needs Better Information and Guidance to More Effectively Manage and Reduce Operating and Support Costs of Major Weapon Systems.” The operating and support (O&amp;S) costs for weapon systems can account for a significant portion of a weapon system’s total life-cycle costs. Weapon systems are costly to sustain in part because they often incorporate a technologically complex array of subsystems and components and need expensive spare parts and logistics support to meet required readiness levels. To improve DOD’s organization and procedures for acquiring weapon systems, Congress passed the Weapon Systems Acquisition Reform Act of 2009 (“the Act”) which contained provisions regarding improving the accuracy of cost estimates for major defense acquisition programs. The Act also directed GAO to review the growth in O&amp;S costs of major weapon systems and to provide the results of this review not later than 1 year after the enactment date the legislation. GAO found that DOD lacks key information needed to effectively manage and reduce O&amp;S costs for most of the weapon systems GAO reviewed—including life-cycle O&amp;S cost estimates and complete historical data on actual O&amp;S costs. In the report, GAO recommended that DOD take steps to retain life-cycle O&amp;S cost estimates for major systems, collect additional O&amp;S cost elements in its visibility systems, update life-cycle O&amp;S cost estimates periodically after systems are fielded, and retain documentation of program changes affecting O&amp;S costs for use in cost analysis. The report can be found at: <a href="http://www.gao.gov/cgi-bin/getrpt?GAO-10-717">http://www.gao.gov/cgi-bin/getrpt?GAO-10-717</a>.</p>	Jul. 20, 2009	GAO-10-717
<p>The USD AT&amp;L issued a memorandum entitled “Correctly Identifying Contractor Size Status.” Current business systems across DoD have each developed methods of indexing contracts independently leading to data integrity problems between data sources. This memorandum aims to eliminate this confusion by establishing a uniform contract indexing methodology across DoD. The memo is at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA003935-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA003935-10-DPAP.pdf</a>.</p>	Jun. 21, 2010	USD AT&L
<p>GAO issued an announcement that as part of its continuing efforts to make its findings and recommendations available to a wide range of audiences, that it has launched a mobile version of its website that will allow users to more easily access GAO reports on their BlackBerrys, iPhones, Droids, and other small-screen mobile devices.</p>	Jul. 28, 2010	Press Release

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<b>OTHER CHANGES, NOTICES, AND MEMORANDA (Cont'd)</b>		
DESCRIPTION	DATE	SOURCE
GAO issued two reports entitled, "Small Business Administration: Undercover Tests Show HUBZone Program Remains Vulnerable to Fraud and Abuse." The first is a regular report and the second is a Testimony report presented to Congress outlining the findings of the first report. Using falsified documents and employee information, GAO obtained HUBZone certification for three bogus firms using the addresses of the Alamo in Texas, a public storage facility in Florida, and a city hall in Texas as principal office locations. A simple Internet search by SBA could have revealed these as phony applications. While the agency has required more documentation in its application process since GAO's July 2008 report, GAO's testing shows that SBA does not adequately authenticate self-reported information and, for these cases, did not perform site visits to validate the addresses. Further, the changes have significantly increased the time it takes SBA to process applications. Specifically, SBA took 7 or more months to process each of the bogus applications—at least 6 months longer than for GAO's previous investigations. SBA continually lost documentation for GAO's fourth application, and eventually withdrew it after GAO failed to resubmit the same materials for the fourth time. The full reports can be found at: <a href="http://www.gao.gov/cgi-bin/getrpt?GAO-10-759">http://www.gao.gov/cgi-bin/getrpt?GAO-10-759</a> and <a href="http://www.gao.gov/new.items/d10920t.pdf">http://www.gao.gov/new.items/d10920t.pdf</a> .	Jun. 25, 2010, released Jul. 28, 2010	GAO-10-759 and GAO-10-920T
The Office of Management and Budget published a notice of the availability of the 2010 Circular A-133 Compliance Supplement which offers interested parties an opportunity to comment on the 2010 Circular A-133 Compliance Supplement (Supplement). This supplement is used in Audits of States, Local Governments, and Non-Profit Organizations.	Jul. 29, 2010	Federal Register

<b>CASES/DECISIONS OF INTEREST</b>		
SYNOPSIS	DATE	CASE NO.
System Engineering International, Inc. (SEI), of Frederick, MD, protested the issuance of a purchase order to M.C. Dean, Inc., of Dulles, VA, under request for quotations issued by the Environmental Protection Agency (EPA) for preventive maintenance services for uninterrupted power systems and power distribution units associated with EPA's information technology infrastructure. SEI challenged the evaluation of its quotation and the selection of a higher-priced quotation for the order. GAO sustained the protest finding that in a best value procurement where the record shows that the agency performed a tradeoff between two higher-rated, higher-priced quotations, but did not consider, in its tradeoff decision, the lower prices submitted by other lower-rated vendors, whose quotations were nonetheless found to be technically acceptable. <a href="http://www.gao.gov/decisions/bidpro/402754.htm">http://www.gao.gov/decisions/bidpro/402754.htm</a>	Jul. 20, 2008	B-402754

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<b>CASES/DECISIONS OF INTEREST</b>		
SYNOPSIS	DATE	CASE NO.
<p>AMEC Earth &amp; Environmental, Inc. protested its proposal's nonselection for one of five awards under a request for proposals issued by the U.S. Coast Guard for design-build and construction services for the Department of Homeland Security. AMEC challenged the agency's evaluation of the offerors' technical proposals and argued that the discussions the agency conducted with AMEC were not meaningful. GAO sustained the protest finding that the record showed that, by asking specific questions regarding the protester's proposed management software tool, the agency did not convey the true nature of its concern, which was that the proposed software tool was generally inappropriate for the project and increased the risk of performance. Further, the solicitation required offerors to identify environmental issues and complications related to performing work at a particular site. GAO found the agency improperly evaluated offers based on different understandings of the solicitation requirements because the agency did not inform offerors that it did not consider the site to be a wetland, but the protester reasonably concluded (from publicly available information) that the site could be considered a wetland, and the agency evaluated its proposal on that basis, while at the same time evaluating other offerors' proposals on the assumption that the site was not a wetland; as a result, agency's evaluation was contrary to the fundamental principle that a solicitation must provide for the submission of proposals based on a common understanding of the agency's requirements. This case is found at: <a href="http://www.gao.gov/decisions/bidpro/401961.htm">http://www.gao.gov/decisions/bidpro/401961.htm</a>.</p>	<p>Dec. 22, 2009 redacted and released Jul. 27, 2009</p>	<p>B-401961 and B-401961.2</p>