



CONTRACTING NEWS TO NOTE
 Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from Aug. 1, 2010 through Aug. 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>.

FAR CHANGES		
CASE NO.	DESCRIPTION	SOURCE
2009-008	An interim rule has been adopted as final, with changes, to amend the FAR to implement the American Recovery and Reinvestment Act of 2009 (Recovery Act) with respect to the "Buy American--Recovery Act" provision, section 1605 in Division A. FAR subpart 25.6, and related provisions and clauses at FAR part 52, are made with conforming changes to FAR subparts 2.1, 5.2, 25.0, and 25.11. An interim rule was published in the Federal Register (FR) on Mar. 31, 2009. As required by section 1605, the final rule makes it clear that there will be full compliance with U.S. obligations under all international trade agreements when undertaking construction covered by such agreements with Recovery Act funds. The new required provisions and clauses implement U.S. obligations under our trade agreements in the same way as they are currently implemented in non-Recovery Act construction contracts.	FAC 2005-45
2005-036	A final rule has been issued to the FAR that clarifies terminology used in the FAR to make it consistent with the Truth in Negotiations Act (TINA.) Based on comments received on the proposed rule published June 22, 2007, a public meeting held on Nov. 1, 2007, and additional deliberations, a final rule has been adopted that--results in (i) refinements to the regulatory definition of cost or pricing data, (ii) the addition of a definition for "certified cost or pricing data," (iii) the addition of a definition for "data other than certified cost or pricing data," and (iv) deletion of the phrase "information other than cost or pricing data."	FAC 2005-45



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FAR CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2008-024	A final rule amending the FAR to implement Sec. 807 of the Ronald W. Reagan National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2005 has been issued. Sec. 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust non-statutory FAR acquisition-related thresholds in 2010. The proposed thresholds published Feb. 4, 2010 (see Contracting News to Note for Feb.) have been adopted with a few reductions based on lower inflation rates being employed.	Oct. 1, 2010	FAC 2005-45

PROPOSED FAR CHANGES			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2009-023	A proposed rule was published to amend the FAR to standardize use of Unique Procurement Instrument Identifiers (PIID) throughout the Government. In accordance with FAR 4.605(a), agencies are required to have in place a process that ensures that each PIID reported to the Federal Procurement Data System (FPDS) for all solicitations, contracts, and related procurement instruments is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. Additionally, FAR 4.605(a) requires the FPDS Program Management Office to maintain a registry of agency unique identifiers on the FPDS Web site, at https://www.fpds.gov ; however, FAR 4.605(a) does not clearly articulate the specific policies and procedures necessary to ensure standardization of contract data beyond FPDS, thereby causing the potential for duplication of contract data across procurement, finance, and related posting and reporting systems. This proposed rule seeks to resolve these issues.	Aug. 17, 2010	Oct. 18, 2010



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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-D003	DoD issued a final rule amending the DFARS to implement the recurring requirement of section 807 of the NDAA for FY 2005. Sec. 807 provides for adjustment every 5 years of statutory acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. This final rule also adjusts some non-statutory acquisition-related thresholds. DoD published a proposed rule on Jan. 20, 2010.	Oct. 1, 2010	Change Notice 20100802
2006-D057	DoD issued a final rule to delete the DFARS language implementing section 852 of the NDAA for FY 2007 that ensures that pass-through charges on contracts or subcontracts that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The interim DFARS rule language, which implements the requirements of section 852, was made obsolete with the publication of the FAR interim rule at 74 FR 52853 on Oct. 14, 2009.	Aug. 10, 2010	Change Notice 20100810
2008-D034	DoD is adopting as final a proposed rule published on July 29, 2009 to amend the DFARS to make requirements for DoD management and oversight of unpriced change orders consistent with those that apply to other unpriced contract actions (UCAs). In the current DFARS, unpriced change orders that are issued in accordance with FAR part 43 and DFARS part 243 were excluded from the scope of subpart 217.74 which prescribes policies and procedures for the management and oversight of UCAs. A rule was proposed because of the need for full accountability and enhanced oversight of UCAs, including unpriced change orders. This final rule adds new policy to address section 812 of the NDAA for FY 2010.	Aug. 10, 2010	Change Notice 20100810
2009-D024	DoD issued a final rule to amend the DFARS by deleting the requirement for contractors to report commercially available off-the-shelf items that contain foreign specialty metals and are incorporated into noncommercial end items. This final rule deletes DFARS clause 252.225-7029, Reporting of Commercially Available Off-the-Shelf Items that Contain Specialty Metals and are Incorporated into Noncommercial End Items. The NDAA for FY 2008 required the Government to report to Congress for FYs 2008 and 2009 on the use of the exception to the specialty metals restrictions of 10 U.S.C. 2533b. This requirement is now obsolete, because the reporting requirement does not extend beyond FY 2009.	Aug. 10, 2010	Change Notice 20100810

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DFARS CHANGES (Cont'd)		
CASE NO.	DESCRIPTION	SOURCE
2006-D057	DoD issued a change to a final rule published on Aug. 10, 2010, concerning Excessive Pass-Through Charges. That final rule incorrectly removed and reserved two CFR sections. DoD issued this technical amendment to correct that error in the final rule.	Change Notice 20100816
2008-D011	DoD adopted as final, without change, an interim rule published July 15, 2009, with a correction published July 21, 2009, that amended the DFARS to implement sections 805 and 815 of the NDAA for FY 2008. This rule specified when time-and-materials or labor-hour contracts may be used for the acquisition of commercial items, and revised the language to address the conditions under which major weapon systems or subsystems may be treated as commercial items.	Change Notice 20100820
2003-D028	DoD issued a final rule, with changes, to a proposed rule issued on July 26, 2005, amending the DFARS to update text on transportation matters relating to DoD contracts, including clarifying certain shipping procedures and offering additional guidance on their use. This final rule is a result of the DFARS Transformation initiative.	Change Notice 20100820
2008-D011	The interim rule published July 15, 2009 is adopted as final, without change, effective Aug. 20, 2010, that amended the DFARS to implement sections 805 and 815 of the NDAA for FY 2008 has been suspended until further notice. Apparently public comments on the interim rule were located, which had not been addressed in finalization of the interim rule. These public comments must be addressed before the formulation of a final rule.	Change Notice 20100827

PROPOSED DFARS REGULATIONS		
CASE NO.	DESCRIPTION	DATE PUBLISHED
2009-D018	DoD is proposing to amend the DFARS to implement a policy memorandum of the Undersecretary of Defense for Acquisition, Technology, and Logistics (USD AT&L) dated Feb. 6, 2007, that required definition of the requirements to track warranties for items subject to Item Unique Identification in the Item Unique Identification registry. This proposed rule stresses that the enforcement of warranties is essential to the effectiveness and efficiency of DoD's material readiness.	Oct. 29, 2010



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OTHER CHANGES, NOTICES, AND MEMORANDA	DESCRIPTION	DATE	SOURCE
	<p>In accordance with the Small Business Paperwork Relief Act of 2002 (44 U.S.C. 3520), the Office of Management and Budget (OMB) with the support of the Small Business Administration (SBA) published its annual list of the compliance assistance resources available to small businesses. This list is available on the following Web site: http://www.business.gov/business-law/contacts/federal/. There is also another provision of this Act that requires each agency to establish one point of contact in the agency to act as a liaison between the agency and small business concerns. (44 U.S.C. 3506(i)(1)). These contacts are also available at http://www.business.gov/business-law/contacts/federal/.</p>	Aug. 3, 2010	Federal Register
	<p>The SBA is amending its regulations governing appeals before the SBA's Office of Hearings and Appeals (OHA). OHA is SBA's administrative tribunal that provides an independent, quasi-judicial forum to appeal various types of decisions which include: SBA formal size determinations; contracting officer designations of North American Industry Classification System (NAICS) codes for procurements government-wide; certain SBA determinations relating to 8(a) Business Development program eligibility, graduation, suspension, and termination; Service-Disabled Veteran-Owned Small Business Concern status appeals, SBA employee dispute appeals; and employee salary offsets.</p>	Aug. 6, 2010	Federal Register
	<p>The Department of State (DoS) is proposing to amend the International Traffic in Arms Regulations (ITAR) to update the policies regarding end-user employment of dual nationals and third-country nationals. DoS is amending Parts 124 and 126 of the ITAR as a result of the President's Task Force on Export Control Reform. The previous policy regarding the treatment of dual nationals and foreign nationals was reconsidered. The current requirement for the provision of additional information within a license to cover dual national and third-country national foreign employees has created a tremendous administrative burden on approved end-users and has evolved into a human rights issue, which has become a focus of contention between the U.S. and allies and friends without a commensurate gain in national security. Based on available intelligence and law enforcement information, and given the current licensing requirements regarding access by dual or third country national employees, most diversions of U.S. Munitions List (USML) items appears to occur outside the scope of approved licenses, not within foreign companies or organizations providing access to properly screened dual national or third country national employees. This amendment will place the affirmative responsibility upon the foreign company, government, or international organization, with the understanding that by accepting the USML defense article, they must comply with the provisions of U.S. laws and regulations to prevent the possible diversion of U.S. defense articles and technology.</p>	Aug. 11, 2010 Comments by Sep. 10, 2010	Federal Register

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OTHER CHANGES, NOTICES, AND MEMORANDA (cont'd)		
DESCRIPTION	DATE	SOURCE
<p>The General Services Administration Acquisition (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to improve the acquisition of utility services. Two clauses specific to utility services are being added to this part. They are the availability of funds clause which replaces the FAR clause and the Disputes clause which supplements the FAR clause.</p> <p>The Department of the Interior (DOI) has adopted as final an interim rule amending the Department of the Interior Acquisition Regulation (DIAR). This action revises the DIAR, 48 CFR chapter 14, but does not impose any new requirements on DOI contractors. The revisions to the DIAR published in the interim rule became effective May 17, 2010.</p>	<p>Aug. 12, 2010 Effective Sep. 13, 2010</p> <p>Aug. 12, 2010</p>	<p>Federal Register</p> <p>Federal Register</p>
<p>The USD AT&L issued a memo entitled: "DoDIG Contracting Action Areas of Concern, 'Purchases Made with Earmarks' (Project No. D2008-DOOOCF-0013.000)". Earmarks are not requested by the department, but come from Congress, often for a specific project or organization. The memo advises that procurement officials must still comply with the FAR and DFARS when awarding earmarked funds. The intent of this memorandum is to address the contracting action concerns of the DoDIG relating to the subject audit report. The memorandum provides direction to DoD agencies as requested in the DoDIG memorandum of June 30, 2010. The report is at: http://www.acq.osd.mil/dpap/policy/policyvault/USA004159-10-DPAP.pdf</p>	<p>Aug. 10, 2010</p>	<p>USD AT&L</p>
<p>By notice of Aug. 12, 2010, President Obama issued a continuation of an Executive Order (E.O.) regarding "Continuation of Emergency Regarding Export Control Regulations." On Aug. 17, 2001, under the authority of the International Emergency Economic Powers Act, the President issued E.O. 13222 which declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the U.S. in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 et seq.). Because the Export Administration Act has not been renewed by the Congress, the national emergency previously declared must continue in effect beyond Aug. 17, 2010, the current expiration date which this E.O. extends.</p>	<p>Aug. 16, 2010</p>	<p>E.O. 13222</p>
<p>The USD AT&L published a memo entitled "Class Deviation—Authorizing Direct Submission of Interim Vouchers." This class deviation deletes the words "for contractors with approved billing systems" from DFARS 242.803(b)(i)(C). This deviation eases the requirements, especially for small businesses, to qualify for direct billing, thereby reducing DoD administration and conserving resources in processing low risk payment vouchers. The full text of the memo is located at: http://www.acq.osd.mil/dpap/policy/policyvault/USA004712-10-DPAP.pdf</p>	<p>Aug. 17, 2010</p>	<p>USD AT&L</p>



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DESCRIPTION	DATE	SOURCE
<p>The USD AT&L published a memo announcing the release of the Defense Contingency Contracting Officer Representative Handbook 1st Edition. This handbook is now electronically available at the DPAP website: http://www.acq.osd.mil/dpap/ccap/cc/docs/DCCORH_full_6-30-10.pdf</p> <p>USD AT&L issued a memo entitled, "Annual Review of the Acquisition of Services Policy and Oversight." This memorandum provides notification of the upcoming annual review of the acquisition of services policy and oversight as required by DoDI 5000.02. DoD conducted this review in 2008 and 2009 by meeting individually with the senior contracting leaders of each department, agency and DoD field activity. The full memo is found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA004868-10-DPAP.pdf</p> <p>The Department of Education published a notice that they plan to reissue the Department of Education Acquisition Regulation (EDAR) in order to update it to accurately implement the current FAR and Department policies. The EDAR was last updated in 1987.</p> <p>GAO released a report entitled, "Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received." In the report, GAO found that from FYs 2005 to 2009, reported obligations for noncompetitive contracts decreased from about 36 to 31% of total obligations, while obligations under contracts competed with only one offer received were steady, at about 13% of the total in each year. In comparing the data in the federal procurement data system to the information in contract files, GAO found that about 18% of the contracts sampled were coded incorrectly—as either not competed when they had been, or as competed with one offer received when they had not been competed at all. Agencies used a variety of exceptions to competition for the contracts and orders in the sample, with the two most common being "only one responsible source" and sole-source awards under the Small Business Administration's 8(a) business development program. For services supporting DOD weapons programs, the government's lack of access to proprietary technical data and decades-long reliance on specific contractors for expertise limit—or even preclude the possibility of—competition. GAO found that contracting approaches for nine contracts reviewed did not reflect sound procurement practices and in some instances sound management practices, in some cases not leveraging the effectiveness of the market place. These approaches included ambiguously written justifications for noncompetitive contracts, very limited documentation of the reasonableness of contractors' proposed prices, instances where the contract's cost grew significantly or where labor categories were improperly authorized, and undefinitized contract actions that did not meet definitization requirements. In response to GAO's findings, some agency officials indicated their belief that regulations are vague regarding the role of the competition advocate, and that given the Office of</p>	<p>Aug. 17, 2010</p> <p>Aug. 20, 2010</p> <p>Aug. 23, 2010 Comment by Sep. 22, 2010</p> <p>Jul. 26, 2010 released Aug. 25, 2010</p>	<p>USD AT&L</p> <p>USD AT&L</p> <p>Federal Register</p> <p>GAO 10-833</p>

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OTHER CHANGES, NOTICES, AND MEMORANDA (Cont'd)	DATE	SOURCE
<p>DESCRIPTION</p> <p>Federal Procurement Policy's (OFPP) recent emphasis on competition, they would like to see more guidance on competition advocate roles and methods of implementing their duties. GAO recommended that OFPP take actions regarding assessment of the reasons only one offer is received and issue guidance on competition advocate roles, including their direct involvement with program offices to seek opportunities for competition. OFPP agreed with the recommendations. The full report is at: http://www.gao.gov/new.items/d10833.pdf.</p>	Aug. 27, 2010	Federal Register
<p>The DoS is amending the ITAR to clarify an exemption for technical data. The clarification is that the exemption covers technical data, regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the U. S. On Nov. 24, 2009, the DoS published a Notice of Proposed Rulemaking (NPRM) to add language clarifying 22 CFR 125.4(b)(9) to allow technical data, including classified information, and regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency, to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the U. S. under certain specified circumstances reflected in 22 CFR 125.4(b)(9)(i) through (iii) The exemption will explicitly allow hand carrying technical data by a U.S. person employed by a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the U. S., as long as certain criteria in Sec. 125.4(b)(9) and 125.4(b)(9)(i)-(iii) are met.</p>	Aug. 27, 2010	Federal Register
<p>DoS is also amending the ITAR to remove the requirements for prior approval or prior notification for certain proposals to foreign persons relating to significant military equipment. In accordance with the President's Export Control Reform effort, on March 29, 2010, DoS published a NPRM to eliminate the requirements for prior approval or prior notification for certain proposals to foreign persons relating to significant military equipment at Sec. 126.8 of the ITAR. The current Sec. 126.8 requires prior approval or prior notification for certain proposals and presentations to make a determination whether to purchase significant military equipment valued at \$14,000,000 or more (other than a member of NATO, Australia, New Zealand, Japan, or South Korea), or whether to enter into a manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value.</p>	Aug. 27, 2010	Federal Register

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	<p>GSA has conducted the annual per diem review resulting in lodging and meal allowance changes for locations within CONUS to provide for the reimbursement of Federal employees' expenses covered by per diem. This Per Diem Bulletin updates the maximum per diem amounts in existing per diem localities and updates the standard CONUS rate. The CONUS per diem rates prescribed in Bulletin 11-01 may be found at http://www.gsa.gov/perdiem. GSA identified five new non-standard areas (NSAs): West Des Moines, IA (Dallas County); Queen Anne County, MD; Moab, UT (Grand County); Richland, WA (Benton County); and Berkeley County, W V.</p>	Aug. 30, 2010	Federal Register
	<p>The FAR Council published a notice that it will hold tribal consultation and outreach meetings to discuss rulemaking associated with Sec. 811 of the NDAA for FY 2010. Sec. 811 addresses requirements for the justification and approval of sole-source contracts over \$20 million under the 8(a) small business development program. Presentations made during the meetings will be taken into consideration by the FAR Council as it develops changes to the FAR to implement Sec. 811. The meetings will be held during the month of Oct. in Washington, DC, Albuquerque, NM, and Fairbanks, AK. For more detailed information about the consultation registration procedures, dates, location, times, and agendas, please see http://www.acq.osd.mil/dpap/dars/section811.html.</p>	Aug. 31, 2010	Federal Register
	<p>USD AT&L issued a memo entitled, "Class Deviation 2010-O0014: Additional Contractor Requirements and Responsibilities." This class deviation replaces and supersedes class deviation 2009-O0014 for contracts performed in Iraq and Afghanistan. The new clause provides information to contractor personnel who perform work on a contract in Iraq or Afghanistan, before beginning such work, about (1) how and where to report an alleged crime and (2) where to seek assistance. The full text of the memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA004448-10-DPAP.pdf</p>	Aug. 31, 2010	USD AT&L
	<p>USD AT&L issued a memo entitled, "Guidance Regarding Purchases from Federal Prison Industries." Sec. 827 of the NDAA for FY 2008, Public Law 110-181, amended 10 U.S.C. 2410n to require DoD to publish a list of product categories for which the Federal Prison Industries' (FPI) share of the DoD market is greater than five percent. This memorandum reminds the acquisition community of the regulations and guidance regarding FPI products both currently identified on this list as well as those that are not. Full text of the memo is at: http://www.acq.osd.mil/dpap/policy/policyvault/USA004613-10-DPAP.pdf</p>	Aug. 31, 2010	USD AT&L



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OTHER CHANGES, NOTICES, AND MEMORANDA (Cont'd)	DESCRIPTION	DATE	SOURCE
	<p>GAO issued a report entitled, "Defense Acquisitions: Navy's Ability to Overcome Challenges Facing the Littoral Combat Ship Will Determine Eventual Capabilities." The Navy's Littoral Combat Ship (LCS) is envisioned as a reconfigurable vessel able to meet three missions: surface warfare, mine countermeasures, and anti-submarine warfare. It consists of the ship (seaframe) and the mission package it carries and deploys. The Navy plans to invest over \$2.5 billion through fiscal year 2035 to acquire LCS. However, recurring cost growth and schedule delays have jeopardized the Navy's ability to deliver promised LCS capabilities. Based on a congressional request, GAO (1) identified technical, design, and construction challenges to completing the first four ships within current cost and schedule estimates, (2) assessed the Navy's progress developing and fielding mission packages, and (3) evaluated the quality of recent Navy cost analyses for seaframes and their effect on program progress. GAO's findings are based on an analysis of government and contractor-generated documents, and discussions with defense officials and key contractors. The full reports is located at: http://www.gao.gov/products/GAO-10-523.</p>	Aug. 31, 2010	GAO 10-523
	<p>GAO issued a report on "Export Promotion: Increases in Commercial Service Workforce Should Be Better Planned." Since the recent recession, policymakers have emphasized the role exports can play in strengthening the U.S. economy and in creating higher paying jobs. In March 2010 President Obama signed an E. O. creating the National Export Initiative (NEI), with a goal of doubling U.S. exports in 5 years. However, since 2004 the workforce of the U.S. and Foreign Commercial Service (CS) has shrunk, calling into question the ability of this key agency to increase its activities to assist U.S. businesses with their exports. In response to a conference committee mandate, GAO reviewed (1) how well CS managed its resources from 2004 to 2009, and (2) the completeness of CS's workforce plans and the quality of its fiscal year 2011 budget request. GAO analyzed data from the Departments of Agriculture, Commerce, and State; reviewed agency documents; and interviewed agency officials. GAO made several recommendations for more effective and efficient operation of the CS. The full report is at: http://www.gao.gov/products/GAO-10-874</p>	Aug. 31, 2010	GAO 10-874

CASES/DECISIONS OF INTEREST		
SYNOPSIS	DATE	CASE NO.
None		