

CONTRACTING NEWS TO NOTE  
Compiled by NCMA Saguaro Chapter

<b>CASES/DECISIONS OF INTEREST</b>		
SYNOPSIS	DATE	CASE NO.
<p>A recent Mondaq news article reported that a “Wrongful Termination for Convenience Results in a Finding of Breach of Contract Against the Government.” The article indicated that a recent Civilian Board of Contract Appeals (CBCA) case, <i>Sigal Construction Corp.</i>, provides a timely reminder that the government's right to terminate a contract for its own convenience is not unlimited, and that the improper exercise of that power will result in the award of damages for lost profits, just as in private contracting. In this case, GSA issued a contract for the renovation of a federal office building which called for the repair of certain building finishes on a square foot basis, at fixed unit prices. At the time of the award, the government found that the unit prices were reasonable and appropriate, but when the volume of work significantly exceeded the contract's estimated quantities, the government sought to reduce costs. Rather than seek to adjust prices based upon the Variation in Estimated Quantities clause of the contract (see FAR 52.211-8), the government barred the contractor from proceeding with the excess unit price work and brought in another contractor to perform that work, at a reduced price. Sigal filed a claim for the profits it would have earned in performing the deleted work and the government sought to defend under the termination for convenience clause of the standard form government construction contract. In its decision, the Board said: “One of the few limitations on the government's right to terminate for convenience is that the government may not terminate simply to get a better price for performing needed work.” A free sign up is required for access but the full article can be found at: <a href="http://www.mondaq.com/unitedstates/article.asp?articleid=107324">http://www.mondaq.com/unitedstates/article.asp?articleid=107324</a>.</p>	<p>Sep. 29, 2010 Article date May 13, 2010 case date.</p>	<p>10-1 BCA ¶ 34442, CBCA 508</p>

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SYNOPSIS	DATE	CASE NO.
<p>Information Ventures, Inc. (IVI), of Philadelphia, Pennsylvania, protested the determination by the Department of Health and Human Services, Centers for Disease Control and Prevention, to award a single indefinite-delivery/indefinite-quantity (ID/IQ) contract, rather than multiple contracts, under request for proposals for support services for the preparation of toxicological profiles. GAO sustained the protest finding that the record failed to support the contracting officer's conclusion that multiple awards were not appropriate. The full decision is located at: <a href="http://www.gao.gov/decisions/bidpro/403321.htm">http://www.gao.gov/decisions/bidpro/403321.htm</a>.</p>	Sep. 27, 2010	B-403321

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SYNOPSIS	DATE	CASE NO.
<p>Two protests by Rice Services, Inc., Smithville, TN, a Historically Underutilized Business Zone (HUBZone) small business concern have been sustained. The first protest was issued for a solicitation issued by the Air Force for mess attendant services at Langley Air Force Base, VA and the second issued as a set-aside for service-disabled veteran-owned small business concerns (SDVOSBC) by the Defense Commissary Agency (DeCA) for shelf stocking and custodial services at the Davis-Monthan Air Force Base Commissary here in Tucson. In both protests Rice argued that the procurements should have been set aside for competition limited to HUBZone small business concerns. Rice Services asserts that the conditions for a mandatory HUBZone set-aside exist, citing the HUBZone statute, 15 U.S.C. sect. 657a, FAR sect. 19.1305(a), and GAO's decision in <u>DGR Assocs., Inc.</u>, B-402494, May 14, 2010, 2010 CPD para. 115. There has been controversy between GAO and the Dept. of Justice (DOJ) as to whether the HubZone program requires prioritization above other socio-economic programs. DOJ issued a memorandum which the agency relied upon in not setting these procurements aside for HubZones. GAO found that while their decisions are not binding on government agencies; this does not affect GAO's statutory obligation to decide protests concerning alleged violations of procurement statutes and regulations. The full text of the cases: <a href="http://www.gao.gov/decisions/bidpro/403746.htm">http://www.gao.gov/decisions/bidpro/403746.htm</a> and <a href="http://www.gao.gov/decisions/bidpro/4029662.htm">http://www.gao.gov/decisions/bidpro/4029662.htm</a></p>	<p>Sep. 16, 2010</p>	<p>B-403746</p>
<p>Shaw-Parsons Infrastructure Recovery Consultants, LLC, of Alexandria, VA, and Vanguard Recovery Assistance, Joint Venture, of Washington, D.C., protested the award of architect/engineering (A/E) services contracts to five companies, pursuant to a solicitation issued by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), to support the Public Assistance program under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.. Both Shaw-Parsons and Vanguard challenged the agency's reevaluation of offerors' past performance, which was undertaken in response to a decision by GAO sustaining a prior protest filed by Shaw-Parsons. GAO found an inconsistency between the evaluations since the agency used a Sources Sought Notice (SSN) which had five numerically rated factors and then used Past Performance Questionnaires that used an adjectival rating system which was inconsistent with the SSN. GAO found that the agency's reevaluation of protester's past performance was unreasonable because the agency's reevaluation of Vanguard was based on a numerical scoring system, which had the effect of penalizing them based on its submission of performance information for additional less relevant contracts. GAO sustained the protest filed by Vanguard and denied the protest filed by Shaw-Parsons. The full case can be found at: <a href="http://www.gao.gov/decisions/bidpro/4016798.htm">http://www.gao.gov/decisions/bidpro/4016798.htm</a>.</p>	<p>Sep. 8, 2010 Released Sep. 22, 2010</p>	<p>B-401679.8; B-401679.9; B-401679.10</p>

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<b>OTHER CHANGES, NOTICES, AND MEMORANDA</b>		
DESCRIPTION	DATE	SOURCE
part implements policy established in DoD Instruction 5200.01. It assigns responsibilities and provides procedures for members of the public to request a declassification review of information classified under the provisions of Executive Order 13526, or predecessor orders.	Comments by Nov. 26, 2010	Register
A final rule (Amendment # 2010-004) was issued to the Federal Travel Regulation (FTR) by updating statutory references in a number of sections, by providing additional guidance for determining distance measurements when traveling by privately owned aircraft, by clarifying provisions regarding the use of personally owned vehicles (POV) for official travel, by updating the addresses to which per diem review requests should be sent, and by changing the method by which agencies must report the use of Government aircraft to carry senior Federal officials and non-Federal travelers.	Sep. 27, 2010 Applies to all official travel on or after Oct. 27, 2010	Federal Register
OMB issued a memorandum to Chief Information Officers of executive Departments and Agencies regarding the use of Internet Protocol version 6 (IPv6). This memo describes specific steps for agencies to expedite the operational deployment and use of IPv6 and can be found at: <a href="http://www.cio.gov/Documents/IPv6MemoFINAL.pdf">http://www.cio.gov/Documents/IPv6MemoFINAL.pdf</a> .	Sep. 28, 2010	OMB Memo
DoD is proposing to update current policies and procedures to reflect the DoD FOIA Program as prescribed by Executive Order 13392. The changes will ensure appropriate agency disclosure of information and offer consistency with the goals of section 552 of title 5, United States Code.	Sep. 30, 2010 Comments by Nov. 29, 2010	Federal Register

<b>CASES/DECISIONS OF INTEREST</b>		
SYNOPSIS	DATE	CASE NO.
Powersolv, Inc., of Reston, VA, protested the award of a contract to ActioNet, Inc., of Vienna, VA, under request for proposals issued by the Department of Transportation, Federal Railroad Administration (FRA), for support of the Railroad Safety Information System (RSIS). Powersolv challenged FRA's evaluation of proposals and award decision. GAO sustained the protest on two grounds finding the agency's evaluation was inconsistent with the solicitation and that the contemporaneous record did not show that the agency meaningfully considered price in the decision, and the agency's arguments in support of its award decision are neither supported by the record nor reasonable. The full decision is located at: <a href="http://www.gao.gov/decisions/bidpro/4025342.htm">http://www.gao.gov/decisions/bidpro/4025342.htm</a> .	Jun. 1, 2010 released Sep. 8, 2010	B-402534; B-402534.2

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<b>OTHER CHANGES, NOTICES, AND MEMORANDA</b>		
DESCRIPTION	DATE	SOURCE
<p>The Department of Energy (DOE) issued an interim final rule with request for comments to amend the DOE Acquisition Regulation (DEAR) to implement Executive Order 13514, Federal Leadership in Environmental, Energy and Economic Performance. The intent of the rule is to leverage agency acquisitions to foster markets for sustainable technologies and energy efficient and environmentally sustainable materials, products, and services.</p>	<p>Sep. 22, 2010 Effective Oct. 22, 2010</p>	<p>Federal Register</p>
<p>The USD AT&amp;L issued a memo entitled, "DoD-Wide Policy for Using the Department of Energy's (DoE's) Work for Others Program (WFO) to Access DoE-Owned Research, Development, and Production Facilities through Interagency Agreements (IAs) in Fiscal Year 2001." This memorandum establishes guidance based on the results of a DoD Inspector General audit. The full memo can be found at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA005518-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA005518-10-DPAP.pdf</a>.</p>	<p>Sep. 24, 2010</p>	<p>DPAP website</p>
<p>President Obama signed into law the Small Business Jobs and Credit Act of 2010 (H.R. 5297), a "small business stimulus" bill intended to create jobs by providing a variety of financial assistance to small businesses. The law also contains a number of significant and wide-reaching provisions that will impact all government contractors. These include:</p> <ul style="list-style-type: none"> <li>• Small Business Certification Integrity which adds an enforcement provision with a strict liability standard for size misrepresentations;</li> <li>• Annual Size Certification which requires all small businesses to recertify their size status on an annual basis through the Online Representations and Certifications Application;</li> <li>• Payment of Subcontractors which imposes new past performance and potential non-responsibility consequences on prime contractors that fail to pay their subcontractors in a timely manner;</li> <li>• Subcontracting Plan Integrity which adds obligations or incentives for contractors to follow their proposed small business subcontracting plans;</li> <li>• Small Business Contracting Parity which eliminates the statutory preference for HUBZone concerns by changing the "shall" to "may" in the existing HUBZone statute;</li> <li>• Expanding the Mentor-Protégé Program by providing for the establishment of a mentor-protégé program for small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone small business concerns, and will be modeled after the existing mentor-protégé program for 8(a) concerns; and</li> <li>• Contract Bundling Accountability which reduces contract bundling by lowering the bundling threshold from \$10 million to only \$2 million</li> </ul>	<p>Sep. 27, 2010</p>	<p>P.L. 111-240</p>
<p>A proposed rule was published on the DoD Mandatory Declassification Review (MDR) Program. This</p>	<p>Sep. 27, 2010</p>	<p>Federal</p>

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<p>The USD AT&amp;L issued a memo entitled, “Assignment of Call Order Codes for DoD Contracts.” This memo announces the update to the call order codes, prescribed by DFARS 204.7004(d). The new re-baselined list of call order code assignments has been posted on the DPAP website and are effective for use immediately. The Program Development and Implementation office within DPAP will subsume the responsibilities for maintenance of all code assignments. DFARS 204.7005 will be updated to include the new process for obtaining a call order code by December 31, 2010. This memo can be found at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA004824-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA004824-10-DPAP.pdf</a>.</p>	Sep. 21, 2010	DPAP Website
<p>GAO issued a report entitled: “Defense Exports: Reporting on Exported Articles and Services Needs to Be Improved.” GAO has previously reported on weaknesses in the export control system. In this report, GAO identified the magnitude and nature of defense articles and services exported and assessed information currently reported on defense exports and any gaps and limitations in defense export data. To conduct this work, GAO analyzed export data from DOD for FMS and the Department of Commerce's U.S. Census Bureau (Census) for DCS for 2005 through 2009; reviewed relevant laws and regulations; assessed State and DOD reports on defense exports; reviewed agency data systems documentation; and interviewed officials from State, DOD, Homeland Security, and Census. For U.S. exports of defense articles about 60 percent have been exported by companies to foreign entities through DCS licenses, while the remaining 40 percent were exported under the FMS program. Although no data are available on the export of defense services--such as technical assistance and training--provided through DCS, exports of defense services through FMS were stable, accounting for about one-third of the value of FMS exports. Congress does not have a complete picture of defense exports under current reporting--including which method of export is used more often by individual countries or for certain types of items. State--which has overall responsibility for regulating defense exports--and DOD, report to Congress in response to various requirements. However, their annual reports on DCS and FMS exports have several information gaps and inconsistencies--in part, because of the differing purposes of the agencies' data systems and different reporting methodologies. Further, while State's report is available on its Web site, DOD's is not. These differences and limitations may inhibit congressional oversight and transparency into the entirety of U.S. defense exports. GAO suggests that Congress consider whether it needs specific data on exported defense services and is recommending that State publicly report consolidated defense export data on DCS and FMS in a consistent manner. In the absence of additional direction and resources from Congress, State did not agree. GAO believes the recommendation remains valid.</p>	Sep. 21, 2010	GAO 10-952

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<p>The United Nations Commission on International Trade Law (UNCITRAL) Working Group on Procurement will meet Nov. 1-5, 2010 in Vienna. At that meeting, the Working Group will continue its work on revisions to the 1994 Model Law on Procurement of Goods, Construction and Services, and it may also begin a review of a Guide to Enactment that will accompany the revised Model Law. To prepare for that meeting, a public meeting will be held, by the Department of State's Advisory Committee on Private International Law, to obtain the views of concerned stakeholders at The George Washington University Law School, Faculty Conference Center, 5<sup>th</sup> floor, 2000 H Street, NW, Washington, DC on October 21, 2010. The meeting will begin at 9:30 a.m. and is expected to last no later than noon. For those unable to attend the public meeting, teleconferencing will be available.</p>	Sep. 14, 2010	Federal Register
<p>A Memorandum for Acquisition Professionals was issued by the Under Secretary for Defense (Acquisitions, Technology, and Logistics) entitled: "Better Buying Power: Guidance for Obtaining Greater Efficiency and Productivity in Defense Spending." In this memo, 23 principal actions to improve efficiency in five major areas were set forth. The full memo can be found at: <a href="http://www.acq.osd.mil/docs/USD_ATL_Guidance_Memo_September_14_2010_FINAL.PDF?transcriptid=4648">http://www.acq.osd.mil/docs/USD_ATL_Guidance_Memo_September_14_2010_FINAL.PDF?transcriptid=4648</a></p>	Sep. 14, 2010	USD AT&L
<p>GAO issued a report entitled, "Export Promotion: The Export-Import Bank's Financing of Dual-Use Exports" in which they reported that for FY's 2007-2009 that the Export-Import (Ex-IM) Bank has not financed any dual-use exports. Ex-Im has statutory authority to provide loans, guarantees, and insurance to help finance U.S. exports of defense articles and services, provided that it determines these items are nonlethal and meant primarily for civilian use (dual-use). However, Ex-Im last financed dual-use exports in FY 2002. Report is at: <a href="http://www.gao.gov/new.items/d101052r.pdf">http://www.gao.gov/new.items/d101052r.pdf</a>.</p>	Sep. 15, 2010	GAO 10-1052R
<p>GAO issued an exposure draft of proposed revisions to Government Auditing Standards (GAGAS) (also known as the Yellow Book). To help ensure that the standards continue to meet the needs of the audit community and the public it serves, the Acting Comptroller General appointed the Advisory Council on Government Auditing Standards to review the standards and recommend necessary changes. This draft includes the Advisory Council's suggestions for proposed changes. GAO is requesting public comments on the proposed revisions which seeks to emphasize the critical role of high quality government audits in achieving credibility and accountability in government. The proposed changes update GAGAS to reflect major developments in the accountability and audit profession and emphasize specific considerations applicable to the government environment.</p>	Sep. 20, 2010 Comment by Nov. 22, 2010	Federal Register

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The Department of Homeland Security DHS is proposing to amend multiple sections of the Homeland Security Acquisition Regulation (HSAR) to align existing content with the FAR; to implement Section 695 of the Post-Katrina Emergency Management Reform Act of 2006; to clarify agency acquisition regulations; and to provide editorial corrections. The HSAR Part 3006 proposed amendment reflects the necessary implementation for the statutory change restricting the length of certain noncompetitive contracts entered into by DHS to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster.	Sep. 13, 2010 Comments by Nov. 12, 2010	Federal Register
The Office of Management and Budget (OMB) is issuing guidance to Federal agencies concerning two requirements for financial assistance applicants and recipients, and one requirement for first-tier subrecipients. An agency under the guidance must require applicants other than individuals, with some specific exceptions, to have Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and maintain current registrations in the Central Contractor Registration (CCR) database. An agency must require applicants and recipients of grants and cooperative agreements to comply with the DUNS number and CCR requirements by October 1, 2010 and applicants and recipients of all other financial assistance types to comply by October 1, 2011.	Sep. 14, 2010	Federal Register
OMB issued interim final guidance to agencies to establish requirements for Federal financial assistance applicants, recipients, and sub-recipients that are necessary for the implementation of the Federal Funding Accountability and Transparency Act of 2006. This guidance provides standard wording for an award term that each agency must include in grant and cooperative agreement awards it makes on or after Oct. 1, 2010, to require recipients to report information about first-tier subawards and executive compensation under only those awards. This implementation parallels the implementation for subcontracts and executive compensation under Federal procurement contracts, which is in the FAR.	Sep. 14, 2010, Comments by Oct. 14, 2010	Federal Register
USD DPAP issued a memo entitled, "Mandatory Use of AbilityOne Program Contract Closeout Services." This memo announced the award of an Indefinite Delivery/Indefinite Quantity (IDIQ) contract awarded by the Army Mission and Installation Contracting Command Center on June 29, 2010, that must be used by all DoD Components when outsourcing contract closeout services. The full memo can be found at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA005132-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA005132-10-DPAP.pdf</a> .	Sep. 14, 2010	USD DPAP

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The Per Diem, Travel and Transportation Allowance Committee of DoD published the Civilian Personnel Per Diem Bulletin Number 270. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States.	Sep. 7, 2010 Effective Sep. 1, 2010	Federal Register
The Government Accountability Office (GAO) issued a report entitled, “University Research: Policies for Reimbursement of Indirect Costs Need to be Updated.” GAO was asked to examine the following issues related to higher education institutions performing basic research for DOD: (1) the variation in proposed and negotiated indirect cost rates and factors that may contribute to variations; (2) how and to what extent the administrative cap and the DOD basic research cap limit reimbursement of indirect costs; and (3) the methods DOD uses for overseeing compliance with indirect cost reimbursement for grants. In the report, GAO is making recommendations to address consistency in rate-setting and to improve oversight of indirect cost reimbursement. The full text of the report can be found at: <a href="http://www.gao.gov/new.items/d10937.pdf">http://www.gao.gov/new.items/d10937.pdf</a>	Sep. 8, 2010	GAO 10-937
Under Secretary of Defense (USD) Defense Procurement and Acquisition Policy (DPAP) issued a memo entitled, “Contract Destination Acceptance Procedures.” This memorandum directs corrective actions to resolve issues with destination acceptance procedures as identified in the September 2008 memorandum issued by the Director, Defense Procurement and Acquisition Policy. The full text of the memo is located at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA004291-09-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA004291-09-DPAP.pdf</a> .	Sep. 9, 2010	USD DPAP
GAO issued a report entitled, “Contractor Integrity: Stronger Safeguards Needed for Contractor Access to Sensitive Information.” In performing agency tasks, contractor employees often require access to sensitive information that must be protected from unauthorized disclosure or misuse. This report assesses the extent to which agency guidance and contracts contain safeguards for contractor access to sensitive information and adequacy of government-wide guidance on how agencies are to safeguard sensitive information to which contractors may have access. GAO identified key attributes involving sensitive-information safeguards, analyzed guidance and met with officials at three agencies selected for their extensive reliance on contractor employees (DoD, Dept. of Homeland Security (DHS), and Dept. of Health and Human Services (DHHS)), analyzed 42 of their contract actions for services, and analyzed the FAR and pending FAR changes regarding government-wide guidance on contractor safeguards for access to sensitive information. GAO’s review and analysis found areas where sensitive information is not fully safeguarded and thus may remain at risk of unauthorized disclosure or misuse. The full report can be found at: <a href="http://www.gao.gov/new.items/d10693.pdf">http://www.gao.gov/new.items/d10693.pdf</a> .	Sep. 10, 2010	GAO 10-693

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<b>DFARS CHANGES (Cont'd)</b>			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2008-D047	DoD issued a final rule amending the DFARS to require contractors to apply Government-assigned serial numbers in human-readable format on major end items when required by law, regulation, or military operational necessity. This final rule establishes a standard DoD method of specifying Government-assigned serial numbers contractually and requires the contractor to associate these serial numbers with the Unique Item Identifier (UII) assigned by the contractor and to register them in the DoD Item Unique Identification (IUID) Registry along with the UII. The rule also requires agreement between the Government and contractor prior to use of the serial numbers in constructing the end item UII.	Sep. 27, 2010	Change Notice 20100927
2008-D040	DoD is adopting as final, with changes, an interim rule published on July 29, 2009, implementing section 884 of the NDAA for FY 2009. Section 884 requires DoD to ensure that, to the maximum extent practicable, in all carriage contracts in which a fuel-related adjustment is provided for, any fuel-related adjustment is passed through to the person who bears the cost of the fuel to which the adjustment relates.	Sep. 27, 2010	Change Notice 20100927

<b>PROPOSED DFARS REGULATIONS</b>			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2009-D023	DoD issued a proposed rule to update the DFARS, Appendix F, Material Inspection and Receiving Report, to incorporate procedures for using the electronic Wide Area Workflow Receiving Report required for use in most contracts in lieu of the DD Form 250, Material Inspection and Receiving Report, now used mostly on an exception basis.	Sep. 17, 2010	Nov. 16, 2010
2010-D001	A proposed rule was issued to update text on patents, data, and copyrights. The proposed rule removes text and clauses that are obsolete or unnecessary; relocates and integrates the coverage for computer software and computer software documentation with the coverage for technical data to eliminate redundant coverage for these subjects while retaining the necessary distinctions; eliminates or combines the clauses associated with technical data and computer software, consistent with the revised and streamlined regulatory coverage; relocates, reorganizes, and clarifies the coverage for rights in works; and relocates to the DFARS companion resource, Procedures, Guidance, and Information (PGI), text that is not regulatory in nature and does not impact the public.	Sep. 27, 2010	Nov. 26, 2010

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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2008-D023	DoD is adopting as final, with minor editorial corrections, an interim rule published on Mar. 1, 2010 which amended the DFARS to implement the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, section 811, entitled “Requirements Applicable to Multiyear Contracts for the Procurement of Major Systems of the Department of Defense.” The interim rule revised DFARS 217.170 and 217.172 to add six new requirements to which the Secretary of Defense must certify in writing when requesting congressional authorization to enter into a multiyear contract for a major defense acquisition program. Among these requirements is the need to certify to certain cost-savings determinations.	Sep. 8, 2010	Change Notice 20100908
2009-D028	DoD issued an interim rule amending DFARS to enable further implementation of section 831 of the NDAA for FY 2009 that required DoD to mitigate the risks associated with personal services by developing guidance enabling contracting officers to better distinguish between personal services and non-personal services. Recommendations by the Office of the DoD Inspector General have highlighted the need for additional clarity in this area.	Sep. 8, 2010	Change Notice 20100908
2009-D035	DoD is adopting as final, without change, an interim rule published Mar. 5, 2010 which amended the DFARS to implement the NDAA for FY 2010 to amend the definition of “contract action” to include task orders and delivery orders. This had the effect of making task orders and delivery orders subject to DoD's policies and procedures for undefinitized contract actions.	Sep. 8, 2010	Change Notice 20100908
N/A	DoD issued a technical amendment to direct contracting officers to the location of procedures relating to obtaining an account in the Electronic Document Access system. Further, current business systems across DoD have each developed methods of indexing contracts independently leading to data integrity problems between data sources. This technical amendment also provides the location of guidance on a uniform contract indexing methodology across DoD.	Sep. 27, 2010	Change Notice 20100927
2010-D015	DoD issued a final rule amending the DFARS to provide the address for the agency Office of the Inspector General as referenced in FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.	Sep. 27, 2010	Change Notice 20100927

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<b>PROPOSED FAR CHANGES</b>			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2009-029	A proposed change to the FAR was published to revise (a) the header for blocks 17 and 18 and (b) block 18 of the Standard Form (SF) 26 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed-bid contract. This case was initiated because contracting officers have mistakenly checked block 18 when awarding negotiated, not sealed bid, contracts. Such use has created the potential for disputes in situations where the Government's intent was not to accept the terms of the offer in its entirety, as the current wording of block 18 may imply.	Sep. 8, 2010	Nov. 8, 2010
2009-034	A proposed rule was issued to amend the FAR to revise the clauses at 52.214-27, 52.215-10 and 52.215-11 to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.	Sep. 22, 2010	Nov. 22, 2010
2009-043	A proposed rule to amend the FAR was issued to implement recommendations of the Government Accountability Office (GAO) Report 09-579 dated June 2009 to Congressional Committees on "Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules Program."	Sep. 27, 2010	Nov. 26, 2010

<b>DFARS CHANGES</b>			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-D014	DoD is adopting as final, without change, an interim rule published on Feb. 24, 2010 to amend the DFARS to implement the Weapon Systems Acquisition Reform Act of 2009, to improve the organization and procedures of DoD for the acquisition of major weapon systems.	Sep. 8, 2010	Change Notice 20100908
2008-D039	DoD is adopting as final, without change, an interim rule published Nov. 23, 2009 amending the DFARS to implement section 825 of the NDAA for FY 2009 and the Vessel Hull Design Protection Amendments of 2008. Section 825 clarifies the Government's rights in technical data in the designs of a DoD vessel, boat, craft, or components thereof.	Sep. 8, 2010	Change Notice 20100908

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<b>FAR CHANGES</b>			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-028	An interim rule was issued to implement Executive Order (E.O.) 13513, issued on October 1, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.” This E. O. was issued to demonstrate Federal leadership in improving safety on the nation's roads and highways, and to enhance the efficiency of Federal contracting. The purpose of this policy is to prevent the unsafe practice of text messaging by Federal contractors while driving in connection with Government business. This policy further promotes economy and efficiency in Federal procurement, and seeks to prohibit the disruption of Government business and Federal procurement, as a result of unsafe text messaging practices.	Sep. 29, 2010 Comments by Nov. 29, 2010	FAC 2005-46
2009-007	An interim rule was issued to implement Department of Labor (DoL) regulations on equal opportunity provisions for various categories of military veterans. This rule sets forth revised coverage and definitions of veterans covered under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA) and includes new reporting requirements established under the VEVRAA and the Jobs for Veterans Act (JVA).	Sep. 29, 2010 Comments by Nov. 29, 2010	FAC 2005-46
2009-020	A final rule was issued to revise FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) program), to conform to the Small Business Administration (SBA) regulations. This final rule amends the FAR to revise FAR 19.804-2(b) to conform to the SBA regulation 13 CFR 124.502(b)(3). The current FAR requires sole source offerings for construction requirements be submitted to the SBA District Office for the geographical area where the work is to be performed. However, the SBA regulation requires the offering letters for sole source requirements offered on behalf of a specific participant be submitted to the SBA district office servicing that concern.	Oct. 29, 2010	FAC 2005-46

CONTRACTING NEWS TO NOTE  
Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from Sep. 110 through Sep. 30, 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
2008-008	An interim rule published October 14, 2009 was adopted as final, with changes, to amend the FAR to implement sections 814 of the NDAA for FY 2007 and 867 of the NDAA for FY 2009, and the Office of Federal Procurement Policy guidance memorandum dated Dec. 4, 2007 entitled, "Appropriate Use of Incentive Contracts" by amending and/or integrating where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts. This final rule adopts the interim rule with one change for clarification. This clarification entails the addition of the phrase "in the aggregate" to FAR 16.401(e)(2), Table 16-1, and FAR 16.401(e)(3)(v), to make it clear that the objective is to consider the contractor's cost, schedule, and technical performance in the aggregate when performing award-fee assessments.	Oct. 29, 2010	FAC 2005-46
2009-039	An interim rule was issued to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.	Sep. 29, 2010 Comments by Nov. 29, 2010	FAC 2005-46
2010-012	An interim rule was issued to to implement sec. 102 and partially implement sec. 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Sec. 102 requires certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996, as amended. Sec. 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran.	Sep. 29, 2010 Comments by Nov. 29, 2010	FAC 2005-46