

CONTRACTING NEWS TO NOTE  
Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from Dec. 1, 2010 through Dec. 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
	FAC 2005-47 was published with technical amendments and the following changes:		
2006-005	A final rule was issued amending the FAR to implement revisions to the Small Business Administration's HUBZone Program. This case required that, for award of a HUBZone contract, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award. In addition, for general construction or construction by special trade contractors, a HUBZone small business concern must spend at least 50% of the cost of contract performance incurred for personnel on its own employees or subcontract employees of other HUBZone small business concerns. The 50% requirement may be waived in some circumstances.	Jan. 12, 2011	Federal Register
2008-031	An interim rule was adopted as final, with changes, to amend the FAR to implement section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, which applies to executive agencies other than DoD. DoD is subject to section 852 of the NDAA for FY 2007, which is also implemented in this final rule. Section 866 requires the Councils to amend the FAR, and section 852 requires the Secretary of Defense to prescribe regulations to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (i.e., pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no or negligible value.	Jan. 12, 2011	Federal Register

CONTRACTING NEWS TO NOTE  
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<b>FAR CHANGES (Cont'd)</b>			
<b>CASE NO.</b>	<b>DESCRIPTION</b>	<b>EFFECTIVE DATE</b>	<b>SOURCE</b>
2008-032	Another interim rule was issued amending the FAR to implement provisions regarding the NDAA for FY 2009 requirements for preventing abuse of interagency contracts. The rule strengthens FAR subpart 17.5, Interagency Acquisitions, by--broadening the scope of coverage to address all interagency acquisitions (with limited exceptions), rather than just those conducted under the Economy Act; requiring agencies to support the decision to use an interagency acquisition with a determination that such action is the “best procurement approach”; directing that assisted acquisitions be accompanied by written agreements between the requesting agency and the servicing agency documenting the roles and responsibilities of the respective parties, including the planning, execution, and administration of the contract; requiring the development of business cases to support the creation of multi-agency contracts.	Dec. 13, 2011 Comments due Feb. 11, 2011	Federal Register
2009-019	An interim rule was issued to amend the FAR to incorporate changes made by the Small Business Administration (SBA) to its Small Disadvantaged Business (SDB) Program to allow subcontractors on Federal contracts to self-represent their status as SDBs to prime contractors and to maintain consistency between the SBA regulations and the FAR.	Dec. 13, 2011 Comments due Feb. 11, 2011	Federal Register
2009-036	An interim rule amending the FAR to implement section 815 of the NDAA for FY 2010. Section 815 extends the flow down of the restriction on subcontracting to lower tier subcontractors that have been suspended or debarred, with some exceptions for contracts for the acquisition of commercial items and commercially available off-the-shelf items.	Dec. 13, 2011 Comments due Feb. 11, 2011	Federal Register
	FAC 2005-48 was issued making the following changes:		
2009-018	An interim rule published June 16, 2010 was adopted as final, with one change, to amend the FAR to revise the clause, Payrolls and Basic Records. This revision implements a Department of Labor rule that protects the privacy of workers.	Dec. 30, 2010	Federal Register

CONTRACTING NEWS TO NOTE  
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FAR CHANGES (Cont'd)			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-027	A final rule amending the FAR to provide additional regulatory coverage to reinforce the requirement of collecting from contractors all forms of Government-provided identification once they are no longer needed to support a contract. DoD Inspector General Audit Report No. D-2009-005, entitled “Controls Over the Contractor Common Access Card Life Cycle,” addressed whether Government controls over contractor Common Access Cards (CAC) were in place and worked as intended. A CAC is the DoD term for a Personal Identity Verification (PIV) card. A PIV card is required in order to gain access to a Federal facility. The most prevalent issue of the audit report, and the one that DoD, GSA, and NASA are undertaking to resolve with this case, was that the CACs were not adequately accounted for after contract performance or completion.	Jan. 31, 2011	Federal Register
2011-005	A final rule was issued to remove FAR coverage of the Small Business Competitiveness Demonstration Program (SBCDP), to meet the requirements of section 1335 of the Small Business Jobs Act of 2010 (the Act). Sec. 1335 of the Act amended the Business Opportunity Development Reform Act of 1988 by deleting the SBCDP. In accordance with the Act, the repeal of the SBCDP became immediately effective upon the enactment of the Act and it will apply to the first full FY after the Sep. 27, 2010, date of enactment. This change will remove the policy, procedures, provisions, clauses, and the information collection and recordkeeping requirements associated with the SBCDP, and will update forms deleting any references to the program.	Jan. 31, 2011	Federal Register
2009-031	A final rule was issued to amend the FAR to clarify the applicability of procedures regarding the termination of contracts to the acquisition of commercial items. This rule clarifies that FAR part 49, Termination of Contracts, <b>does not apply</b> to the acquisition of commercial items when using FAR part 12 procedures.	Jan. 31, 2011	Federal Register

CONTRACTING NEWS TO NOTE  
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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2006-D029	DoD is issuing a final rule amending the DFARS to revise the domestic source restriction on acquisition of ball and roller bearings. The current DFARS restriction on ball and roller bearings (225.7009) implemented statutory and annual appropriation restrictions that required that all ball and roller bearings and bearing components, either as end items or components of end items, be <b>wholly</b> manufactured in the U. S. or Canada. This final rule, which implements the DoD annual appropriations act domestic source restrictions, requires that each ball or roller bearing be manufactured in the U. S., its outlying areas, or Canada, and that the cost of the bearing components manufactured in the U. S., its outlying areas, or Canada, shall exceed 50% of the total cost of the bearing components of that ball or roller bearing.	Dec. 8, 2010	Change Notice 20101208
2010-D004	DoD is converting an interim rule published in the FR May 19, 2010 to a final rule with changes. The interim rule implemented section 8116 of the DoD Appropriations Act for Fiscal Year (FY) 2010 to restrict the use of mandatory arbitration agreements when awarding contracts that exceed \$1 million when using FY 2010 funds appropriated or otherwise made available by the DoD Appropriations Act. It allows the Secretary of Defense to waive applicability to a particular contractor or subcontractor, if determined necessary to avoid harm to national security. This rule does not apply to the acquisition of commercial items, including commercially available off-the-shelf items. After June 17, 2010, sec. 8116(b) required the contractor to certify compliance by subcontractors.	Dec. 8, 2010	Change Notice 20101208
Various	DoD is making technical amendments to the DFARS to set forth references to supplementary information and procedures pertaining to specific categories of DoD acquisitions.	Dec. 16, 2010	Change Notice 20101216
2009-D012	DoD issued a final rule to amend the DFARS to implement--waiver of section 302(a) of the Trade Agreements Act of 1979, as amended, which prohibits acquisitions of products or services from nondesignated countries, in order to allow acquisition from the nine South Caucasus/Central and South Asian (SC/CASA) states; and determination of inapplicability of the Balance of Payments Program evaluation factor to offers of products (other than arms, ammunition, or war materials) from the SC/CASA states to support operations in Afghanistan. This rule implements a proposed rule published Jan. 4, 2010 with no substantive changes.	Dec. 29, 2010	Change Notice 20101216

CONTRACTING NEWS TO NOTE  
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<b>DFARS CHANGES (Cont'd)</b>			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-D015	DoD issued a final rule to amend the DFARS to implement sec. 207 of the Weapon Systems Acquisition Reform Act (WSARA) of 2009. Sec. 207 addresses organizational conflicts of interest (OCI) in major defense acquisition programs and required DoD to revise the DFARS to provide uniform guidance and tighten existing requirements relating to OCIs of contractors in major defense acquisition programs. The law sets out situations that must be addressed and allows DoD to establish such limited exceptions as are necessary to ensure that DoD has continued access to advice on systems architecture and systems engineering matters from highly qualified contractors, while also ensuring that such advice comes from sources that are objective and unbiased. In forming this final rule, comments from an Advance Notice of Proposed Rulemaking published Mar. 26, 2008, from a public meeting held on Dec. 8, 2009, and a proposed rule published Apr. 22, 2010 were considered.	Dec. 29, 2010	Change Notice 20101229

<b>PROPOSED DFARS REGULATIONS</b>			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2009-D038	DoD is proposing to amend the DFARS to improve the effectiveness of DoD oversight of contractor business systems. Contractor business systems and internal controls are the first line of defense against waste, fraud, and abuse. Weak control systems increase the risk of unallowable and unreasonable costs on Government contracts. To improve the effectiveness of Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA) oversight of contractor business systems, DoD is considering a rule to clarify the definition and administration of contractor business systems. DoD published a proposed rule in the FR on Jan. 5, 2010 on the same case no. The public comment period closed Mar. 16, 2010. Based on the comments received and subsequent revisions to the proposed rule, DoD is again republishing this as a proposed rule with request for comments.	Dec. 3, 2010	Jan. 3, 2011

CONTRACTING NEWS TO NOTE  
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<b>PROPOSED DFARS REGULATIONS (Cont'd)</b>			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2009-D008	DoD is proposing to amend the DFARS to revise DFARS part 245, Government Property, to reflect the recent revisions to FAR part 45, Government Property. This rule proposes to update and reorganize DFARS subparts 245.6 and 245.7 for consistency with FAR changes published on May 15, 2007, that address management of Government property in the possession of contractors, as well as the related DFARS changes published at on July 29, 2009 under DFARS Case 2007-D020. Minor related changes are proposed in part 201 and subparts 245.1 and 245.5. The rule also proposes to add a new property disposal clause at 252.245-70XX, Reporting, Reutilization, and Disposal.	Dec. 3, 2010	Jan. 3, 2011
2009-D038	DoD published an extension to the proposed rule listed above published for the second time on Dec. 3, 2010 to amend the DFARS to improve the effectiveness of DoD oversight of contractor business systems. A decision was made to extend the comment period for 7 additional days to provide more time for interested parties to review the proposed DFARS changes.	Dec. 9, 2010	Jan. 10, 2011
2009-D043	DoD published a proposed amendment to the DFARS to revise and expand reporting requirements for Government-furnished property to include items uniquely and non-uniquely identified, and to clarify policy for contractor access to Government supply sources. Current DFARS policy requires contractors to report to the DoD Item Unique Identification (IUID) Registry property that is classified as equipment, special tooling, and special test equipment items valued at \$5,000 or more, and items valued at less than \$5,000 when required in accordance with contract terms and conditions. In lieu of these dollar thresholds, reporting requirements are being revised and expanded to require contractors to report Government-furnished property (GFP) with existing unique item identification to the DoD IUID Registry; and all GFP without an existing unique item identification to be reported to the DoD GFP Hub.	Dec. 22, 2010	Feb. 22, 2011

CONTRACTING NEWS TO NOTE  
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OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
The Government Accountability Office (GAO) released a report entitled “Acquisition Reform Challenges Facing Government.” This was a presentation was made by the Acting Comptroller General at the Integrated Program Management 2010 Conference held November 8, 2010 in Bethesda, MD. The report discussed trends outlined in GAO’s strategic plan, large scale acquisitions: target of opportunity, acquisition process breakdowns, and recent reform efforts. The full report is located at: <a href="http://www.gao.gov/cghome/d11209cg.pdf">http://www.gao.gov/cghome/d11209cg.pdf</a> .	Nov. 8, 2010 Released Dec. 1, 2010	GAO-11-209CG
The Under Secretary of Defense (Acquisition, Technology, and Logistics) (USDAT&L) issued a notice that it is waiving the limitation of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom (UK). 10 U.S.C. 2534 limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of enumerated items from sources in the UK, unless otherwise restricted by statute. This waiver is effective for one year, beginning Dec. 23, 2010. The list of items to which this waiver applies: 1. Air circuit breakers; 2. Welded shipboard anchor and mooring chain with a diameter of four inches or less; 3. Gyrocompasses; 4. Electronic navigation chart systems; Steering controls; 6. Pumps; 7. Propulsion and machinery control systems; and 8. Totally enclosed lifeboats.	Dec. 8, 2010	Federal Register
The Director, Defense Procurement and Acquisition Policy (DPAP) issued a memorandum entitled, “Contractor Unique Identification.” In this memorandum it states that Contracting Officers are routinely citing the wrong contractor name, address, and Commercial and Government Entity (CAGE) code on orders placed against contracts, agreements, and schedules causing confusion and data integrity problems. This memorandum directs components to conduct corrective training and notifies them that DPAP is measuring compliance. The full memo can be found at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA002937-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA002937-10-DPAP.pdf</a>	Dec. 8, 2010	DPAP website
Another DPAP memo was issued on “Competition Report for FY 2010.” This memo discusses the requirement for competition advocates to prepare and submit annual reports to the agency senior procurement executive and the chief acquisition officer in accordance with agency procedures. This memorandum provides guidance on the content of the subject report; requires the report be submitted to DPAP by Jan. 15, 2011; and sets FY 2011 goals for overall and effective competition. The full memo is at: <a href="http://www.acq.osd.mil/dpap/policy/policyvault/USA006638-10-DPAP.pdf">http://www.acq.osd.mil/dpap/policy/policyvault/USA006638-10-DPAP.pdf</a>	Dec. 17, 2010	DPAP website

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DESCRIPTION	DATE	SOURCE
<p>The Senate passed a bill to increase oversight of government acquisitions and offer more consistent acquisition workforce training. The bill is entitled “The Federal Acquisitions Improvement Act (FAI).” It calls for the FAI Director to be appointed by and report to the Office of Federal Procurement Policy Administrator and expands the use of the Acquisition Workforce Training Fund to include any purpose in the OFPP statute. Currently, the training fund cannot be used for recruiting candidates to the acquisition field. The full text of the bill can be found at: <a href="http://www.gpo.gov/fdsys/pkg/BILLS-111s2902rfh/pdf/BILLS-111s2902rfh.pdf">http://www.gpo.gov/fdsys/pkg/BILLS-111s2902rfh/pdf/BILLS-111s2902rfh.pdf</a> .</p>	Dec. 14, 2010	Library of Congress-Thomas
<p>GAO issued a report entitled: “Export Controls: Agency Actions and Proposed Reform Initiatives May Address Previously Identified Weaknesses, but Challenges Remain.” The U.S. government controls the export of billions of dollars in arms and “dual-use” items—items that have both commercial and military applications which are exported to U.S. allies and strategic partners. GAO has reported on numerous weaknesses in the export control system, including poor coordination among the multiple agencies involved (Commerce, Defense, Homeland Security, Justice, State, and Treasury), which have led to jurisdictional disputes and enforcement challenges, and the lack of systematic assessment of the overall effectiveness of the export control system resulting in this being included as part of GAO’s high-risk areas. Agencies have taken actions to address several weaknesses in the U.S. export control system previously identified and the Administration’s export control reform initiatives have the potential to address others if fully implemented; however, for a few areas, such as developing measures of effectiveness for the arms export control system, agencies have not addressed some of GAO’s prior findings and the reform framework does not contain specific initiatives to address them. Furthermore, the Administration may have challenges in implementing fundamental reform of the export control system—such as reaching interagency agreement on which items need to be controlled and obtaining congressional approval for implementing reforms. <a href="http://www.gao.gov/products/GAO-11-135R">http://www.gao.gov/products/GAO-11-135R</a> .</p>	Nov. 16, 2010 Released Dec. 16, 2010	GAO-11-135R
<p>As part of the President’s Export Control Reform effort, the Department of State (DoS) is proposing to amend the International Traffic in Arms Regulations (ITAR) to revise Category VII of the U.S. Munitions List (USML). The proposed rule would revise Category VII (tanks and military vehicles) to describe more precisely the defense articles described therein.</p>	Dec. 10, 2010 Comments due Feb. 8, 2011	Federal Register

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DoS also published an advance notice of proposed rulemaking seeking public comments on revisions to the USML that would make it a “positive list” of controlled defense articles, requests that the public “tier” defense articles based on the Administration's three-tier control criteria, and identify those current defense articles that the public believes do not fall within the scope of any of the criteria's tiers. A “positive list” is a list that describes controlled items using objective criteria rather than broad, open-ended, subjective, or design intent-based criteria. DDTC is not seeking with this advance notice of proposed rulemaking (ANPRM) input on whether particular defense articles should or should not be controlled on the USML or whether any defense articles should be controlled differently. Rather, it is only seeking with this ANPRM input on how the USML can be revised so that it clearly describes what is subject to the jurisdiction of the ITAR, how defense articles are identified by tier, and what current defense articles do not fall within the scope of any of the tiers.	Dec. 10, 2010 Comments due Feb. 8, 2011	Federal Register
The Department of the Treasury (DoT) is proposing to amend the Department of the Treasury Acquisition Regulation (DTAR) to: update, revise, or remove, as applicable, outdated text and references; add new text to maintain consistency with the FAR; incorporate Treasury-specific policy associated with current FAR requirements; reflect the Treasury's organization and delegation of authorities; and make minor editorial changes.	Dec. 17, 2010 Comments due Feb. 15, 2011	Federal Register
GSA is correcting a final rule (FTR Amendment 2010-07) that appeared in the Federal Register on Nov. 29, 2010. The applicability date for the final rule was incorrectly designated Dec. 29, 2010. This final rule correction document corrects the applicability date to Jan. 1, 2011.	Dec. 22, 2010	Federal Register
GSA published the annual privately owned vehicle (POV) mileage reimbursement rates for CY 2011. The rates can be found at: <a href="http://www.gsa.gov/portal/content/104790">http://www.gsa.gov/portal/content/104790</a>	Dec. 29, 2010 effective 01/01/2011	FTR Bulletin 11-03
The Bureau of the Public Debt, Fiscal Service, Dept. of Treasury published a notice that the annual prompt payment interest rate is 2-5/8% annually for the period beginning Jan. 1, 2011, and ending on June 30, 2011. This rate also applies to claims pursuant to the Contracts Disputes Act.	Dec. 29, 2010 effective 01/01/2011	Federal Register

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<b>OTHER CHANGES, NOTICES, AND MEMORANDA (cont'd)</b>		
DESCRIPTION	DATE	SOURCE
GAO issued a report on “Defense Acquisitions: Opportunities Exist to Improve DOD's Oversight of Power Source Investments”. In the report, GAO found that virtually all DOD weapon systems and equipment rely on power sources, such as batteries. In response to a mandate in the FY 2010 NDAA, GAO determined DOD's approximate investment in power sources, the extent to which DOD coordinates its power source investments, and the extent to which DOD's policies facilitate the use of standard power sources. GAO obtained and analyzed DOD investment data, met with DOD officials and industry representatives, and attended DOD conferences aimed at facilitating power source coordination. GAO determined that DOD has invested at least \$2.1 billion in power sources from FY 2006 -FY 2010 but that DOD lacks comprehensive, department-wide data for its total investment in the power sources area. The full report can be found at: <a href="http://www.gao.gov/new.items/d11113.pdf">http://www.gao.gov/new.items/d11113.pdf</a>	Dec. 30, 2010	GAO-11-113

<b>CASES/DECISIONS OF INTEREST</b>		
SYNOPSIS	DATE	CASE NO.
NCS Technologies, Inc., of Gainesville, VA, protested the terms of request for quotations (RFQ) issued by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), for computer hardware. NCS challenges several solicitation provisions as unduly restrictive. GAO found that RFQ requirements that computers and monitors be from the same manufacturer and use Intel-based microprocessors was overly restrictive where the agency fails to demonstrate a reasonable basis for the requirements and sustained the protest. <a href="http://www.gao.gov/decisions/bidpro/403435.htm">http://www.gao.gov/decisions/bidpro/403435.htm</a>	Nov. 8, 2010 redacted and released Dec. 2, 2010	B-403435
CIGNA Government Services, LLC, of Nashville, TN, protested the award of a contract to Highmark Medicare Services, Inc., of Camp Hill, PA, under a request for proposals issued by the Center for Medicare and Medicaid Services, Department of Health and Human Services to obtain a Medicare Administrative Contractor to provide certain health insurance benefit administrative services. CIGNA argued that the agency failed to conduct meaningful discussions with it, and that the agency's evaluation of proposals and selection of Highmark's proposal for award were unreasonable. Among other findings, GAO found that after discussions had concluded, the agency determined that some of the protester's proposed costs, in the protester's initial and final revised proposals, were understated in comparison with those proposed by other offerors. The agency adjusted the most probable cost estimate associated with the protester's costs upward rather than reopening discussions to allow the protester an chance to address the issue. The full decision is at: <a href="http://www.gao.gov/decisions/bidpro/4010622.htm">http://www.gao.gov/decisions/bidpro/4010622.htm</a>	May 6, 2009 redacted and released Dec. 2, 2010	B-401062.2; B-401062.3,