

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from Jan. 1, 2011 through Jan. 31, 2011 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 (FR) at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>

FAR CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2010-016	An interim rule was issued amending the FAR to implement section 3010 of the Supplemental Appropriations Act, 2010. Sec. 3010 requires that the information in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, shall be made publicly available. This interim rule notifies contractors of this new statutory requirement for public access to FAPIIS and creates a new FAR clause (52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters) to support the posting of information in FAPIIS consistent with sec. 3010. All information posted in FAPIIS on or after April 15, 2011, except for past performance reviews, will be publicly available.	Jan. 24, 2011 Comments by Mar. 25, 2011	FAC 2005-49

PROPOSED FAR CHANGES			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
	NONE		

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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
N/A	DoD issued a change notice to make technical amendments to the DFARS to correct the clause list and associated clause dates in the clause "Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items."	Jan. 3, 2011	Change Notice 20110103
N/A	DoD is making technical amendments to the DFARS to provide needed editorial changes and guidance to contracting officers to make changes such as updating thresholds, references, and correcting clause numbers.	Jan. 20, 2011	Change Notice 20110120

PROPOSED DFARS REGULATIONS			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
	None		

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OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
The Undersecretary of Defense (Acquisition, Technology, and Logistics (USD AT&L) issued a memo entitled, “Better Buying Power: Guidance for Obtaining Greater Efficiency and Productivity in Defense Spending; ‘Align Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA) Processes to Ensure Work is complementary.’” A previous Sep. 14, 2010 memo issued a call for better work alignment and reduction in DCMA/DCAA overlap. The Directors of the Defense Procurement and Acquisition Policy (DPAP), DCMA, and DCAA have been working to ensure that USD AT&L’s guidance is put into place. Accordingly they have increased taken a number of actions including increasing the thresholds for cost/price proposal audits and establishing DCMA as the single agency responsible for issuing Forward Pricing Rate Agreements and Forward Pricing Rate Recommendations. The full memo is located at: http://www.acq.osd.mil/dpap/policy/policyvault/USA005343-10-DPAP.pdf	Jan. 4, 2011	DPAP website
The Office of Management and Budget (OMB) in cooperation with the Administrator of Federal Procurement Policy, and the U.S. Intellectual Property Enforcement issued a memo on Technology Neutrality. The memo serves as a reminder to federal agencies that they should acquire information technology using technology and vendor neutral descriptions rather than brand names. The full memo can be found at: http://cio.gov/documents/Technology-Neutrality.pdf .	Jan. 7, 2011	OMB
NASA issued a final rule to revise the NASA FAR Supplement (NFS) to update Agency-level, property-related provisions, clauses, prescriptions and procedures to be consistent with changes made to Part 45 and Part 52.245 of the FAR in Federal Acquisition Circular (FAC) 2005-17 which significantly rewrote FAR Part 45, Government Property, and changed property related definitions, provisions and clauses which are required to be used in all solicitations and contracts issued after the effective date of 14 June 2007.	Jan. 12, 2011	Federal Register
GAO issued a report entitled, “Defense Acquisitions: Further Action Needed to Better Implement Requirements for Conducting Inventory of Service Contract Activities.” GAO indicated that DOD relies on contractors to perform numerous functions. While offering benefits and flexibility this practice can also result in too much reliance on contractors to support core missions placing DoD at risk. Secretary of Defense and Congress have mandated steps to reduce DoD’s reliance on contractors, accordingly annual inventories of the number of contractor employees working under service contracts and the functions and activities they performed have been compiled. GAO identified problems in data collection and recommended that DoD develop and issue a plan of action to collect data and improve its estimating approach. The full report is at: http://www.gao.gov/new.items/d11192.pdf	Jan. 14, 2011	GAO-11-192

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OTHER CHANGES, NOTICES, AND MEMORANDA (cont'd)		
DESCRIPTION	DATE	SOURCE
<p>An Executive Order (EO) was issued to supplement to and reaffirm the principles, structures, and definitions governing contemporary regulatory review that were established in previous EO 12866 of Sep. 30, 1993. As stated in that EO and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. In this EO, the President requires Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. The text of the EO can be found at: http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order</p>	Jan. 18, 2011	Whitehouse website – see link.
<p>USD AT&L issued a memo entitled, “Rescission of Class Deviation: Reporting Requirements for Prime Vendor Contracts.” This memorandum rescinds class deviation 2010-O0002 which was necessary to implement a statutory requirement to prohibit the award of prime vendor contracts for depot-level maintenance and repair of a weapon system or other military equipment prior to 30 days after congressional notification. Section 322 of the NDAA for FY 2011 (Public Law 111-383) repealed this requirement. The full text of the memo is found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA000231-11-DPAP.pdf</p>	Jan. 19, 2011	DPAP Website
<p>USD AT&L issued a memo entitled, “Continuing Appropriations Act Authority.” This memorandum serves as a reminder that DoD has been operating under the Continuing Appropriations Act for FY 2011 (Pub. L. 111-242, as amended by Pub. L. 111-290, Pub. L. 111-317, and Pub. L. 111-322), which extends the FY 2010 DoD Appropriations Act authorities and conditions through March 4, 2011. The Continuing Appropriations Act requires that all of the authorities and conditions of the prior year's Act carry forward unless the Continuing Appropriations Act specifies otherwise. The memo is located at: http://www.acq.osd.mil/dpap/policy/policyvault/USA000266-11-DPAP.pdf</p>	Jan. 19, 2011	DPAP Website

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OTHER CHANGES, NOTICES, AND MEMORANDA (cont'd)		
DESCRIPTION	DATE	SOURCE
USD AT&L issued a memo entitled, "Purchases from Federal Prison Industries; Updated List of Federal Supply Classification (FSC) Codes to be Competed." Section 827 of the NDAA for FY 2008, Public Law 110-181, required 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 provides an updated list of product categories for which FPI's share of the DoD market is greater than five percent based on Fiscal Year 2010 data from the Federal Procurement Data System. The full memo can be located at: http://www.acq.osd.mil/dpap/policy/policyvault/USA007062-10-DPAP.pdf	Jan. 19, 2011	DPAP Website
A notice was issued announcing that the Products and Services Code (PSC) Manual, which provides codes to describe products, services, and research and development purchased by the government, is in the process of being updated by GSA, which maintains the PSC Manual. The codes are one of the data elements reported in the Federal Procurement Data System (FPDS).	Jan. 24, 2011	Federal Register
NASA is revising the NASA FAR Supplement (NFS) to update requirements related to Information Technology Security, consistent with Federal policies for the security of unclassified information and information systems. The rule imposes no new requirements. Its purpose is to more clearly define applicability, update procedural processes, eliminate the requirement for contractor personnel to meet the NASA System Security Certification Program, and provide a Web site link within a contract clause to a library where contractors can find all underlying regulations and referenced documents.	Jan. 24, 2011	Federal Register
USD AT&L issued a memo entitled, "Rescission of Award Fee Contracts Memoranda." This memo provides guidance on award fee contracts. With the publication of a final FAR case, which updated FAR 16.4, some of the policy contained in several memoranda on incentive contracting became obsolete. Accordingly, the policy is rescinded in the following memos - Award Fee Contracts, March 29, 2006; Proper Use of Award Fee Contracts and Award Fee Provisions, April 24, 2007; and Award and Incentive Fees - Data Collection, April 24, 2007. For current guidance on award fee contracts, see FAR 16.4, DFARS 216.4 and its companion resource, PGI 216.4. The full memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA002789-10-DPAP.pdf .	Jan. 26, 2011	DPAP Website

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CASES/DECISIONS OF INTEREST		
SYNOPSIS	DATE	CASE NO.
<p>Northeast Military Sales, Inc. (NEMS), of Sterling, MA, protested the award of a contract to Nayyarsons Corporation, of Williston Park, NY, under a request for proposals issued by the DoD, Defense Commissary Agency (DeCA), for deli and bakery resale operations. NEMS broadly challenged the agency's technical, past performance, and price evaluations, as well as the adequacy of discussions. As a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and GAO will not substitute its judgment for reasonably based past performance ratings; however, in this case, GAO found that the agency's assessment of awardee's past performance as exceptional was not reasonable where the agency failed to consider adverse past performance information of which it was aware. GAO sustained the protest.</p>	<p>Jan. 13, 2011 redacted and released Jan. 26, 2011</p>	<p>B-404153</p>