

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from Mar. 1, 2011 through Mar. 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
	FAC 2005-50 was issued with 4 interim and 5 final rules as follows:		
2008-030	An interim rule was issued to implement section 864 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009. Section (sec.) 864 requires the FAR to be revised to address the use and management of cost-reimbursement contracts and identifies the following three areas that should be considered--(a) Circumstances when cost-reimbursement contracts are appropriate; (b) Acquisition plan findings to support the selection of a cost-reimbursement contract; and (c) Acquisition resources necessary to award and manage a cost-reimbursement contract. This law aligns with the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which directed agencies to save \$40 billion in contracting annually by FY 2011 and to reduce the use of high-risk contracts.	Mar. 16, 2011 Comments by May 16, 2011	FAC 2005-50
2007-012	An interim rule was issued to implement sec. 863 of the NDAA for FY 2009 which is entitled "Requirements for Purchase of Property and Services Pursuant to Multiple-Award Contracts." It mandates enhanced competition for orders placed under multiple-award contracts, including GSA's Federal Supply Schedules (FSS). If an individual order over the simplified acquisition threshold does not follow the sec. 863 competitive procedures, sec. 863 requires that a notice of, and the determination to waive competition for, the order be published in FedBizOpps within 14 days after award.	Mar. 16, 2011 Comments by May 16, 2011	FAC 2005-50

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



FAR CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-038	An interim rule was issued to implement section 811 of the NDAA for FY 2010. This FAR change encourages agencies to maximize the effective use of competition by making certain that the proper Justification and Approval (J&A) is obtained prior to award of 8(a) sole-source contracts over \$20 million, as required by section 811. This written J&A must be approved by an appropriate official and, after award, made public.	Mar. 16, 2011 Comments by May 16, 2011	FAC 2005-50
2008-007	An interim rule has been adopted as final, with changes, to implement sec. 826, Market Research, of the NDAA for FY 2008. Sec. 826 requires the head of an agency to take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of \$5 million for the procurement of items other than commercial items engages in market research as necessary before making purchases exceeding the simplified acquisition threshold.	Apr. 15, 2011	FAC 2005-50
2011-004	An interim rule was issued to implement sec. 1347 of the “Small Business Jobs Act of 2010” which clarifies the contracting officer's ability to use discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a), HUBZone, or service-disabled veteran-owned small business (SDVOSB) programs. There is no order of priority among small businesses in the 8(a) Business Development Program, the HUBZone Program, or the SDVOSB Program. Sec. 1347 changed the word “shall” to “may” at sec. 31(b)(2)(B) of the Small Business Act (15 U.S.C. 57a(b)(2)(B)). This interim rule makes similar changes to the FAR, ensuring that the FAR clearly reflects the statutory relationship among the small business programs and eliminates any confusion on the part of contracting officers or others.	Mar. 16, 2011 Comments by May 16, 2011	FAC 2005-50
2008-034	An interim was adopted as final, without change, to implement sec. 868 of the NDAA for FY 2009 which provides that the FAR shall be amended with respect to the procurement of commercial services, specifically services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. These services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services. The rule details the information the contracting officer may consider in order to make this determination.	Mar. 16, 2011	FAC 2005-50

CONTRACTING NEWS TO NOTE
 Compiled by NCMA Saguaro Chapter

FAR CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-040	An interim rule published July 2, 2010 was adopted as final, without change, to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.	Mar. 16, 2011	FAC 2005-50
2009-025	An interim rule published June 16, 2010 was adopted as final, without change, to align the FAR with a Cost Accounting Standards (CAS) Board clause, Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns.	Mar. 16, 2011	FAC 2005-50
2009-026	An interim rule published on June 16, 2010 was adopted as final, without change, to align the FAR with the revised Cost Accounting Standards (CAS) Board standards "Cost Accounting Standard for composition and measurement of pension cost," and "Accounting for the cost of deferred compensation."	Mar. 16, 2011	FAC 2005-50
Various	Technical amendments were issued to make editorial changes.	Mar. 16, 2011	FAC 2005-50

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

DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2008-D042	DoD issued a final rule to implement section 815 of the NDAA for FY 2009. Sec. 815 addresses the preservation of tooling for major defense acquisition Programs and mandates the publication of guidance requiring the "preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program."	Mar. 2, 2011	Change Notice 030211

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-D031	DoD issued an interim rule to implement sec. 821 of the NDAA for FY 2010. Sec. 821 provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.	Mar. 2, 2011 Comments by May 2, 2011	Change Notice 030211
2009-D020	DoD is adopting as a final rule, with minor changes, an interim rule that implemented exemptions from the Prompt Payment Act. The interim rule exempted military payments related to contingencies and certain payments related to emergencies and the release or threatened release of hazardous substances.	Mar. 2, 2011	Change Notice 030211
N/A	DoD issued technical amendments to the DFARS to add text and a reference to a memo from the Director, Defense Procurement and Acquisition Policy (DPAP) by adding a sec. at 215.300 with a reference to DPAP memorandum dated March 4, 2011, "Department of Defense Source Selection Procedures." The memo provides mandatory requirements for conducting competitively negotiated acquisitions under FAR part 15 and outlines a common set of principles and procedures for conducting such acquisitions.	Mar. 11, 2011	Change Notice 031111
2008-D006	DoD is adopting as final, without change, an interim rule published June 21, 2010 to implement sec. 828 of the NDAA for FY 2008 which authorizes DoD to enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy. P. L. 110-181 authorizes DoD to enter into a contract for a period in excess of five years only if the head of the contracting activity determined, on the basis of a business case analysis prepared by DoD, that—(1) The proposed purchase of electricity under such contract is cost effective; and (2) It would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.	Mar. 17, 2011	Change Notice 031711
2011-D025	DoD is issuing an interim rule to implement section 847 of the NDAA for FY 2011 which provides a nonavailability exception to the requirement at 10 U.S.C. 2533a (Berry Amendment) to acquire only domestic hand or measuring tools.	Mar. 17, 2011 Comments by May 16, 2011	Change Notice 031711

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2011-D026	DoD is issuing a final rule to implement sec. 222 of the NDAA for FY 2011 (Pub. L. 111-383) which repeals the restriction on purchase of Ballistic Missile Defense research, development, test, and evaluation from foreign sources. This final rule amends subpart 225.70 by deleting sec. 225.7016 and the associated clause at DFARS 252.225-7018.	Mar. 17, 2011	Change Notice 031711
2009-D029	DoD is adopting as final, without change, an interim rule published October 29, 2010 to implement sec. 807 of the NDAA for FY 2010. Sec. 807 requires that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of DoD, in current or future military operations, should be inspected for safety and habitability prior to use, and that such facilities should be brought into compliance with generally accepted standards for the safety and health of personnel to the maximum extent practicable consistent with the requirements of military operations and the best interests of DoD to minimize the safety and health risk posed to such personnel.	Mar. 17, 2011	Change Notice 031711

PROPOSED DFARS REGULATIONS			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2009-D043	DoD published a proposed rule on Dec. 22, 2010 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. On these dates, DoD published a notice of their intent to host a public meeting to discuss the proposed rule and clarified meeting information.	Mar. 1, 2011 and Mar. 4, 2011	Apr. 8, 2011
2011-D010	DoD is proposing to amend the DFARS) to increase the use of fixed-price incentive (firm target) contracts, with particular attention to share lines and ceiling prices. This DFARS case was initiated to incentivize productivity and innovation in industry, as set forth in a memorandum from the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD AT&L), dated Nov. 3, 2010 which provided guidance to the secretaries of the military departments and directors of defense agencies on obtaining greater efficiency and productivity in defense spending.	Mar. 2, 2011	May 2, 2011

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



PROPOSED DFARS REGULATIONS			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2009-D026	DoD is proposing to update and clarify the requirements for multiyear contracting. This DFARS case was initiated by DoD based on an internal DoD policy decision to perform a comprehensive review of DFARS subpart 217.1, Multiyear Contracting to update and clarify the requirements relating to multiyear contracting.	Mar. 2, 2011	May 2, 2011
2010-D011	A proposed DFARS change was published to require contractors to report independent research and development (IR&D) projects generating annual costs in excess of \$50,000. This proposed rule revises requirements for reporting IR&D projects that generate annual costs in excess of \$50,000 to the Defense Technical Information Center (DTIC). Beginning in the 1990s, DoD reduced its technical exchanges with industry, in part to ensure independence of IR&D. The result has been a loss of linkage between funding and technological purpose. The reporting requirements, mandated by 10 U.S.C. 2372, will provide in-process information from DoD-sponsored IR&D projects to increase effectiveness by providing visibility into the technical content of industry IR&D activities to meet DoD needs, promoting the technical prowess of the industry, and maximizing the value of the IR&D funds DoD disburses without infringing on the independence of contractors.	Mar. 2, 2011	May 2, 2011
2010-D026	A proposed rule was issued to amend the DFARS to require contractors to display the DoD fraud hotline poster in common work areas. This rule proposes to implement the recommendations of the DoD Inspector General (IG), by providing a DFARS clause to use in lieu of the FAR clause 52.203-14, Display of Hotline Poster(s).	Mar. 11, 2011	May 20, 2011
2010-D022	DoD is proposing to add a contract clause that clearly identifies any items being purchased that are critical safety items so that the proper risk-based surveillance can be performed. This DFARS case was initiated at the request of the Defense Contract Management Agency (DCMA). DoD is proposing to amend 209.2, Qualifications Requirements, to add a new contract clause prescription at 209.270-5, Contract clause, and a new clause at 252.209-700X, Critical Safety Items.	Mar 17, 2011	May 16, 2011

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
The Government Accountability Office (GAO) issued a report entitled, “8(a) Program: The Importance of Effective Fraud Prevention Controls.” In March 2010, GAO issued two companion reports on the 8(a) program, one focused on internal control procedures and processes that SBA has implemented to ensure that only eligible firms participate in the program and one focused on fraud prevention. This testimony is based on the latter report, and addresses three issues: (1) whether ineligible firms were participating in the 8(a) program, (2) the results of GAO’s proactive testing of the application process, and (3) strengths and weaknesses in SBA's fraud prevention system. The full report can be found at: http://www.gao.gov/new.items/d11440t.pdf .	Mar. 3, 2011	GAO 11-440T
The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to amend parts 908, Required Sources of Supplies and Services, 945, Government Property, and related 970, Management and Operating Contracts, to remove out-of-date coverage, to update references and to conform to the FAR.	Mar. 4, 2011 Comments by Apr. 4, 2011	Federal Register
The USD AT&L issued a memo which attaches a 45-page DoD Source Selection Procedures document which was prepared by the Source Selection Joint Analysis Team to provide uniform Source Selection guidance and simplify the process. The full text can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA007183-10-DPAP.pdf .	Mar. 4, 2011	DPAP website
GAO issued a report entitled “Improvements Needed to Prevent Unauthorized Technology Releases to Foreign Nationals in the United States.” GAO found that there were four factors providing risk that foreign nationals could gain unauthorized access to controlled dual-use technology. 1) law enforcement officials, foreign businessmen, scientists, engineers, and others have gained unauthorized access in the U.S. to controlled dual-use technologies; 2) during FYs 2004 through 2009, Commerce suspended the export privileges of three violators and fined 14 U.S. companies about \$2.3 million for allowing foreign nationals unauthorized access to controlled technologies; 3) Commerce’s screening of overseas visa applications for potential unlicensed deemed exports dropped from 54,000 in fiscal year 2001 to 150 in fiscal year 2009; and 4) from FYs 2004 to 2009, the U.S. issued about 1.05 million specialty occupation visas in high-technology fields to foreign nationals from 13 countries of concern to work in the U.S, while Commerce issued deemed export licenses authorizing transfers of technology to about 3,200 foreign nationals from these countries. GAO recommendations include having Commerce assess issuance of specialty occupation visas covered by deemed export license applications and report to Congress on how it will implement prior deemed export recommendations as part of the export control reform process. The full report can be found at: http://www.gao.gov/new.items/d11354.pdf .	Feb. 2, 2011, released Mar. 7, 2011	GAO-11-354

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
The Department of Education (DoE) published a notice that it had updated its Acquisition Regulation (EDAR) in order to accurately implement the current FAR and Department policies.	Mar 8, 2011 effect. May 9, 2011	Federal Register
The State Department is proposing to amend the International Traffic in Arms Regulations (ITAR) to update policies for Parts 123 and 126 to reflect new policies regarding coverage of replacement parts/ components and incorporated articles. Any comments will be accepted until April 14, 2011.	Mar. 15, 2011	Federal Register
The USD AT&L issued a memo entitled, "Continuation of Defense Acquisition Workforce Improvement Initiative." This memorandum provides clarity on the Department's intent to complete the acquisition workforce initiative to add approximately 10,000 civilian Full Time Equivalents using the Defense Acquisition Workforce Development Fund. The full text can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA000471-11-DPAP.pdf	Mar. 15, 2011	DPAP website
The Small Business Administration (SBA) proposes to increase small business size standards for 35 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated 45 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine size standards of industries grouped by an NAICS Sector. SBA has issued a White Paper entitled "Size Standards Methodology" and published in the October 21, 2009 issue of the Federal Register and available on its Web site at http://www.sba.gov/size for public review and comments. This White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.	Mar. 16, 2011 Comments by May 16, 2011	Federal Register
The Defense Acquisition University (DAU) will host a forum to discuss implementation of Better Buying Power: Guidance for Obtaining Greater Efficiency and Productivity in Defense Spending, outlined in the Dr. Ashton B. Carter, USD AT&L, 14 Sep. 2010 memorandum to acquisition professionals. The event will be held on Thursday, April 21, 2011 from 8 a.m.-12:30 p.m. at the DAU, Howell Auditorium, Bldg. 226, 9820 Belvoir Rd., Fort Belvoir, VA 22060.	Mar. 18, 2011	Federal Register

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
USD AT&L issued a memo entitled, “Class Deviation – Designation of Contracting Officer’s Representatives. The memo advises that effective immediately, contracting officers shall use the provided text included in the memo instead of DFARS 201.602-2(2)(i). This substitution clarifies that a contracting officer’s representative (COR) must be an employee, military or civilian, of the U.S. Government, a foreign government, or NATO/Coalition partners, and clarifies that contractor personnel may not serve as CORs. This class deviation remains in effect until incorporated into the DFARS or until rescinded. The full text can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA001688-11-DPAP.pdf	Mar. 21, 2011	DPAP website
GSA has conducted a mid-year review and has determined that the per diem rates for certain locations in the States of CA, MI, NY, PA, TX, and VA are inadequate. Accordingly, they issued Notice of Per Diem Bulletin 11-06 which increases rates for these states. This notice is effective April 1, 2011, and applies for travel performed on or after April 1, 2011, through Sep. 30, 2011.	Mar. 22, 2011	Federal Register
The Department of the Interior (DOI) is proposing to revise their Department of Interior Acquisition Regulation (DIAR) in order to make minor corrections to DOI acquisition procedures to be consistent with the FAR, and to add a new clause covering contract administration roles and responsibilities. Some DIAR coverage is being revised and obsolete material is being removed.	Mar. 22, 2011 comments by May 23, 2011	Federal Register
The Department of State (DoS) is proposing to amend the International Traffic in Arms Regulations (ITAR) to add an exemption for the temporary export of chemical agent protective gear for exclusive personal use to destinations not subject to restrictions and to Afghanistan and Iraq under specified conditions. Additionally, an exemption for firearms and ammunition is clarified by removing certain extraneous language that does not change the meaning of the exemption.	Mar. 23, 2011 comments by May 23, 2011	Federal Register
DoS published a proposed rule in the Federal Register on February 24, 2011, concerning a proposed “DS-2032 Statement of Registration” Information Collection. The proposed rule contained incorrect addresses for the submission of public comments concerning the information collection which this publication corrects.	Mar. 24, 2011	Federal Register
USD AT&L published a memo entitled, “Update to Deployment of Subaward Reporting Requirements for the Federal Funding Accountability and Transparency Act.” This memorandum updates the previous policy letter dated October 28, 2010, and instructs contracting officers to include the Treasury Accountable Symbol on each contract action report entered in the Federal Procurement Data System that is valued greater than \$25,000. The full memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA001412-11-DPAP.pdf	Mar. 24, 2011	DPAP website

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter

OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
<p>USD AT&L published a memo entitled, “Upcoming Changes in the Acquisition Curriculum in Fiscal Year 2012.” This memo notifies the contracting workforce of changes to the contracting curriculum and DAWIA certification standards, effective 1 October 2011. The effort involves changes to existing course assets and development of new learning assets. Additionally the transition plan provides information for the workforce and DACMs to facilitate a smooth transition to the new certification standards. The full text of the memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA001329-11-DPAP.pdf</p>	Mar. 25, 2011	DPAP website
<p>USD AT&L published a memo entitled, “Class Deviation—Simplified Acquisition Threshold for Humanitarian and Peacekeeping Operations” which indicates that effective immediately, for any contract to be awarded and performed, or purchase to be made, outside the U.S. in support of a humanitarian or peacekeeping operation, contracting officers shall use the stated definition of the simplified acquisition threshold (\$300,000). This class deviation is effective upon signature, and remains in effect until incorporated in the DFARS or is otherwise rescinded. The full text of the memo is at: http://www.acq.osd.mil/dpap/policy/policyvault/USA001830-11-DPAP.pdf</p>	Mar. 28, 2011	DPAP website
<p>GAO issued its ninth annual assessment DoD weapon system acquisitions, an area that is on GAO’s high-risk list. The report is in response to the mandate in the joint explanatory statement to the DOD Appropriations Act, 2009. It includes observations on the performance of DOD’s 2010 portfolio of 98 major defense acquisition programs; data on selected factors that can affect program outcomes; an assessment of the knowledge attained by key junctures in the acquisition process for a subset of 40 programs, which were selected because they were in development or early production; and observations on the implementation of acquisition reforms. To conduct this review, GAO analyzed cost, schedule, and quantity data from DOD’s Selected Acquisition Reports and collected data from program offices on performance requirements and software development; technology, design, and manufacturing knowledge; and the implementation of DOD’s acquisition policy and acquisition reforms. GAO also compiled one- or two-page assessments of 71 weapon programs. These programs were selected based on their cost, stage in the acquisition process, and congressional interest. DOD disagreed with GAO’s use of total program cost growth as a performance metric because it includes costs associated with capability upgrades and quantity increases. GAO believes it remains a meaningful metric and that the report explicitly accounts for the cost effect of quantity changes. The full report can be found at: http://www.gao.gov/products/GAO-11-233SP</p>	Mar. 29, 2011	GAO Report 11-233SP

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



OTHER CHANGES, NOTICES, AND MEMORANDA

DESCRIPTION	DATE	SOURCE
USD AT&L published a memo entitled, "Utilities Privatization—Class Deviation from FAR Part 31." This class deviation replaces the one issued on August 13, 2007 which expired on August 31, 2010. This new class deviation expands application to firm fixed price and fixed price with economic price adjustment contracts to be consistent with the September 2004 Cost Accounting Standards Board waiver for contracts entered into under the authority of 10 U.S.C. § 2688, "Utility Systems, Conveyance Authority" (erroneously referred to as "section 2686" in the original 2004 CAS Board waiver). The full text of the memo can be located at: http://www.acq.osd.mil/dpap/policy/policyvault/USA001350-11-DPAP.pdf	Mar. 31, 2011	DPAP website

CASES/DECISIONS OF INTEREST

SYNOPSIS	DATE	CASE NO.
In an interesting decision regarding conflict of interest involving a former government employee, GAO denied the protest by Unisys Corporation against an award made to Science Applications International Corporation (SAIC). Unisys protested that SAIC's use of a former government employee in the preparation of its proposal provided the firm with an unfair competitive advantage due to the employee's access to proprietary information. GAO denied the protest finding that the record reflected that the information at issue was not competitively useful. This finding was made, despite the fact that the government official was approached by SAIC prior to his retirement. GAO found that while the official's failure to provide the proper written notice of his pre retirement employment discussions with SAIC was a violation of the Proprietary Information Agreement, it determined the question became whether the individual acted in a way to have created an unfair competitive advantage. GAO found that Unisys failed to establish that the former government official's alleged PIA violation created an unfair competitive advantage, therefore there was no basis upon which to sustain Unisys's PIA protest allegations. The full decision is found at: http://www.gao.gov/decisions/bidpro/4030542.htm	Feb. 8, 2011 redacted and released Mar. 8, 2011	B-403054.-2

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter



CASES/DECISIONS OF INTEREST		
SYNOPSIS	DATE	CASE NO.
<p>Global Computer Enterprises, Inc. (GCE), of Reston, VA, and Savantage Financial Services, Inc., of Rockville, MS, each protested the award of a contract to CACI, Inc.-Federal, of Chantilly, VA, under a request for proposal (RFP) issued by the Department of Homeland Security (DHS) to design and implement DHS's department-wide financial management system, known as the Transformation and Systems Consolidation (TASC) program. Both protested that DHS awarded the contract to CACI despite knowing, prior to award, that the agency's requirements as set forth in the RFP had materially changed. GCE protested that DHS unreasonably evaluated CACI's and their technical proposals. GAO sustained GCE's protest and dismissed Savantage's finding that they were not an "interested party" for the purposes of this procurement as they failed to meet a mandatory solicitation requirement. . GCE also protested that the awardee did not comply with a mandatory solicitation requirement to propose an integrated financial management solution currently in use in the federal government. GAO sustained GCE's protest on this issue. The full text of the decision is located at: http://www.gao.gov/decisions/bidpro/404597.htm .</p>	Mar. 9, 2011	B-404597; B-404597.2; B-404597.3
<p>A1 Procurement, JVG of Miami, FL, protested the rejection of its proposal and the award of a contract to DRT Cemetery Management, of San Francisco, CA, under a request for proposals (RFP) issued by the Department of Veterans Affairs (VA) for ground maintenance service. A1 Procurement contends that the VA unreasonably rejected its proposal on the basis of its low price without any evaluation of the protester's approach to performing the contract. A1 Procurement states it was able to offer its low price because the firm's headquarters is only two blocks from the cemetery. The protester also complains that its proposed overall price was only 6 percent below the awardee's price. GAO found the record to be devoid of contemporaneous documentation showing that the agency evaluated A1 Procurement's price in accordance with the RFP, and that it contained no explanation in response to the protest to support the agency's conclusion that A1 Procurement's price was too low. Accordingly, GAO found the VA's rejection of A1 Procurement's proposal on the basis that the firm's price was too low unreasonable and sustained the protest. The full decision is located at: http://www.gao.gov/decisions/bidpro/404618.htm .</p>	Mar. 14, 2011	B-404618

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter

CASES/DECISIONS OF INTEREST		
SYNOPSIS	DATE	CASE NO.
<p>California Industrial Facilities Resources, Inc., d/b/a CAMSS Shelters, of Monroe, WA, protested the terms of request for proposals (RFP) issued by the Defense Logistics Agency (DLA) for tents, shelters and associated accessories. CAMSS asserts that the RFP fails to include specifications that are adequate for purposes of competing for the agency's requirements. GAO sustained the protest finding that solicitation was unduly restrictive because it required firms to submit proposals based solely on a brand name list of particular products and did not include salient characteristics for the brand name products, and the agency had not taken the steps necessary to procure its requirements using other than full and open competition. The full text of this decision is located at: http://www.gao.gov/decisions/bidpro/4033973.htm.</p>	Mar. 21, 2011	B-403397.3
<p>I. .M. Systems Group (IMSG), of Rockville, MD, protested the rejection of its proposal and the award of indefinite-delivery/indefinite-quantity (IDIQ) contracts to three other firms under a request for proposals issued by the National Oceanic Atmospheric Administration (NOAA), Department of Commerce, for scientific and technical support services. GAO sustained the protest finding that the NOAA improperly rejected the protester's low-priced proposal as unrealistic but did not reasonably assess the realism of the protester's labor rates, as required by the solicitation. They also sustained the protest challenging the award of IDIQ contracts where, although the solicitation provided that the agency would assess the realism of offerors' loaded labor rates, the agency did not assess the realism of the awardees' labor rates. This case was interesting for several reasons. First, IMSG was an incumbent and the decision that their rates were unrealistic was based on comparison to the Independent Government Cost Estimate. Offerors were required to provide loaded labor rates for the contract and price four sample tasks. During the protest, it was determined that IMSG had made a clerical error which reduced their price on one sample task by \$400,000. GAO found that the government had not done a proper job of analysis or they should have found this error. Initially IMSG and the other three awardees were all rated the same technically, and IMSG was the lower priced. At the Source Evaluation Board, the reviewers recommended the other three firm's scores be raised to "outstanding" substituting their findings for those of the Technical Evaluation Panel without proper documentation. The full text of the decision is located at: http://www.gao.gov/decisions/bidpro/4045833.htm.</p>	Feb. 25, 2011 redacted and issued Mar. 22, 2011	B-404583; B-404583.2; B-404583.3,