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48 CFR Parts 1, 2, 5, et al. and Chapter 1
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****[Docket FAR 2011–0076, Sequence 2]****Federal Acquisition Regulation;
Federal Acquisition Circular 2005–50;
Introduction****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Summary presentation of final
and interim rules.**SUMMARY:** This document summarizes
the Federal Acquisition Regulation
(FAR) rules agreed to by DoD, GSA, and
NASA in this Federal Acquisition
Circular (FAC) 2005–50. A companion
document, the *Small Entity Compliance
Guide* (SECG), follows this FAC. The
FAC, including the SECG, is available
via the Internet at [http://](http://www.regulations.gov)
www.regulations.gov.**DATES:** For effective dates and comment
dates, see separate documents, which
follow.**FOR FURTHER INFORMATION CONTACT:** The
analyst whose name appears in the table
below in relation to each FAR case.
Please cite FAC 2005–50 and the
specific FAR case numbers. For
information pertaining to status or
publication schedules, contact the
Regulatory Secretariat at (202) 501–
4755.**LIST OF RULES IN FAC 2005–50**

Item	Subject	FAR case	Analyst
I	Proper Use and Management of Cost-Reimbursement Contracts (Interim)	2008–030	Sakalos.
II	Requirements for Acquisitions Pursuant to Multiple-Award Contracts (Interim)	2007–012	Clark.
III	Justification and Approval of Sole-Source 8(a) Contracts (Interim)	2009–038	Robinson.
IV	Additional Requirements for Market Research	2008–007	Sakalos.
V	Socioeconomic Program Parity (Interim)	2011–004	Morgan.
VI	Use of Commercial Services Item Authority	2008–034	Chambers.
VII	Trade Agreements Thresholds	2009–040	Davis.
VIII	Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Con- cerns.	2009–025	Chambers.
IX	Compensation for Personal Services	2009–026	Chambers.
X	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow.
For the actual revisions and/or
amendments made by these FAR cases,
refer to the specific item numbers and
subject set forth in the documents
following these item summaries. FAC
2005–50 amends the FAR as specified
below:

**Item I—Proper Use and Management of
Cost-Reimbursement Contracts (FAR
Case 2008–030) (Interim)**

This interim rule amends the FAR to
implement section 864 of the Duncan
Hunter National Defense Authorization
Act for Fiscal Year 2009 (Pub. L. 110–
417). This law aligns with the goal of
the Presidential Memorandum on
Government Contracting, issued on
March 4, 2009, which is to reduce
waste, fraud, and abuse in Government
contracting. This rule provides internal
regulatory guidance on the proper use
and management of all contracts,
specifically cost-reimbursement
contracts. The rule identifies (1)
circumstances when cost-
reimbursement contracts are
appropriate; (2) acquisition plan
findings required to support the contract
type selection; and (3) the acquisition
resources necessary to award and
manage a cost-reimbursement contract.

**Item II—Requirements for Acquisitions
Pursuant to Multiple-Award Contracts
(FAR Case 2007–012) (Interim)**

This interim rule amends the FAR to
implement section 863 of the Duncan
Hunter National Defense Authorization
Act for Fiscal Year 2009 (Pub. L. 110–
417). Section 863 mandates enhanced
competition for orders placed under
multiple-award contracts, including
GSA's Federal Supply Schedules. If an
order over the simplified acquisition
threshold does not follow the section
863 competitive procedures, section 863
requires that a notice and the
determination of an exception be
published in FedBizOpps within 14
days after award.

The interim rule relocates all
procedures for establishing a Blanket
Purchase Agreement (BPA) or placing
an order under a BPA in one subsection,
FAR 8.405–3. New BPAs must be
established in accordance with the new
competition standard. Orders over the
simplified acquisition threshold against
a new multiple-award BPA must meet
the new competition standards; use is
discretionary for existing multiple-
award BPAs.

For orders under FAR part 16 task-
and delivery-order contracts, orders
over the simplified acquisition
threshold must meet the new

competition procedures; each contract
holder must receive notice of the intent
to make a purchase.

**Item III—Justification and Approval of
Sole-Source 8(a) Contracts (2009–038)
(Interim)**

This interim rule amends the FAR to
implement section 811 of the National
Defense Authorization Act for Fiscal
Year 2010 (Pub. L. 111–84). Section 811
prohibits the award of a sole-source
contract in an amount over \$20 million
under the 8(a) program authority (15
U.S.C. 637(a)) without first obtaining a
written Justification and Approval (J&A)
approved by an appropriate official and
making public the J&A and related
information. This is a new internal
Government requirement for the
development and approval of a sole-
source J&A for 8(a) sole-source awards
over \$20 million. It neither prohibits
such awards nor increases the
qualifications required of 8(a) firms. No
automated systems are impacted.

**Item IV—Additional Requirements for
Market Research (FAR Case 2008–007)**

This final rule adopts, with changes,
the interim rule that amended the FAR
to implement section 826 of the
National Defense Authorization Act for
Fiscal Year 2008 (Pub. L. 110–181).
Section 826, entitled “Market Research,”

established new requirements for agencies subject to Title 10, United States Code. As a matter of policy, this provision of law was applied to contracts awarded by all executive agencies. The rule requires that market research must be conducted before an agency places a task or delivery order in excess of the simplified acquisition threshold under an indefinite-delivery indefinite-quantity contract. In addition, a prime contractor with a contract in excess of \$5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold. Among other changes, the final rule also deletes the language added to FAR 52.244-6 (Alternate I) and relocates it to a new FAR clause 52.210-1, Market Research.

Item V—Socioeconomic Program Parity (FAR Case 2011-004) (Interim)

This interim rule amends the FAR to implement section 1347 of the “Small Business Jobs Act of 2010” (Pub. L. 111-240) and the Small Business Administration regulations governing specific contracting and business assistance programs. Section 1347 changed the word “shall” to “may” at section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)), thereby permitting a contracting officer to use discretion when determining whether an acquisition will be restricted to a small business participating in the 8(a) Business Development Program, the Historically Underutilized Business Zone Program, or the Service-Disabled Veteran-Owned Small Business Program.

Item VI—Use of Commercial Services Item Authority (FAR Case 2008-034)

This final rule adopts, without change, an interim rule that implemented section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 868 provides that the FAR shall be amended with respect to the procurement of commercial 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. Such 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 these services.

The rule details the information the contracting officer may consider in

order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

Item VII—Trade Agreements Thresholds (FAR Case 2009-040)

This final rule adopts, without change, an interim rule that amended the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Item VIII—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009-025)

This final rule adopts, without change, the interim rule that amended the FAR to revise FAR 30.201-4(c), 30.201-4(d)(1), 52.230-4, and 52.230-6 to maintain consistency between FAR and Cost Accounting Standards (CAS) regarding the administration of the Cost Accounting Standard Board’s (CASB) rules, regulations and standards. This revision was necessitated by the CASB publishing a final rule in the **Federal Register** on March 26, 2008 (73 FR 15939) which implemented the revised clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns.

Item IX—Compensation for Personal Services (FAR Case 2009-026)

This final rule adopts, without change, the interim rule that amended the FAR to align the existing FAR 31.205-6(q)(2)(i) through (vi) with the changes made in Cost Accounting Standards (CAS) Board standards 412 “Cost Accounting Standard for composition and measurement of pension cost,” and 415 “Accounting for the cost of deferred compensation.” Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

Item X—Technical Amendments

Editorial changes are made at FAR 19.201, 52.212-3, and 52.212-5.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Federal Acquisition Circular (FAC) 2005-50 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-50 is effective March 16, 2011, except for Item IV which is effective April 15, 2011, and Item II which is effective May 16, 2011.

Dated: March 4, 2011.

Amy G. Williams,

Acting Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: March 4, 2011.

Joseph A. Neurauter,

Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: February 28, 2011.

Sheryl J. Goddard,

Acting Assistant Administrator for Procurement National Aeronautics and Space Administration.

[FR Doc. 2011-5551 Filed 3-15-11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

[FAC 2005-50; FAR Case 2008-030; Item I; Docket 2011-0082, Sequence 1]

RIN 9000-AL78

Federal Acquisition Regulation; Proper Use and Management of Cost-Reimbursement Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. This law aligns