

FEDERAL ACQUISITION REGULATION (FAR)

The Federal Acquisition Regulation (FAR) was established to codify uniform policies for acquisition of supplies and services by executive agencies. It is issued and maintained jointly under the statutory authorities granted to the Secretary of Defense, Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, known as the FAR Council. Overall statutory authority is found at chapters 11 and 13 of title 41 of the United States Code.

Regulatory and Deregulatory Priorities

Executive Order 13777, "Enforcing the Regulatory Reform Agenda" (February 24, 2017), required the FAR Council to oversee the implementation of regulatory reform initiatives and policies. The reform initiatives and policies include Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs" (January 30, 2017), section 6 of Executive Order 13563, "Improving Regulation and Regulatory Review" (January 18, 2011), and Executive Order 12866, "Regulatory Planning and Review" (September 30, 1993). In response to Executive Order 13777, the FAR Council reviewed and evaluated existing policies and regulations and identified regulations that could be repealed, replaced, or modified to reduce the regulatory burden. In relation to Executive Order 13771, the FAR Council conducts analysis of the regulatory cost or savings impact for agenda items.

The Fall 2020 Unified Agenda consists of fifty-two (52) active agenda items. Two (2) have been identified as deregulatory: FAR Case 2016-011, Revision of Limitations on Subcontracting, and FAR Case 2018-013, Exemption of Commercial and COTS Item Contracts from Certain Laws and Regulations. Two (2) have been identified as regulatory: FAR Case 2017-011, Section 508-Based Standards in Information and Communication Technology, and FAR Case 2018-002, Protecting Life in Global Health Assistance.

Rulemaking Priorities

The FAR Council is required to amend the Federal Acquisition Regulation to implement statutory and policy initiatives. The FAR Council prioritization is focused on initiatives that:

- Support national security efforts, especially safeguarding Federal Government information technology systems;
- Streamline regulations and reduce unjustified burdens, especially for commercial and commercially available off-the-shelf (COTS) items;
- Promote disclosure and open government; and
- Improve small business opportunities with the Federal Government.

Rulemakings That Support National Security

FAR Case 2020-011, Implementation of Issued Exclusion and Removal Orders, will implement authorities authorized by Section 2020 of the SECURE Technology Act for the Federal Acquisition Security Council (FASC), the Secretary of Homeland Security, the Secretary of Defense and the Director of National Intelligence to issue exclusion and removal orders. These exclusions and removal orders are issued to protect national security by excluding certain covered products, services, or sources from the Federal supply chain.

FAR Case 2019-018, Federal Acquisition Supply Chain Security Act of 2018, will implement the Federal Acquisition Supply Chain Security Act of 2018, which provides authorities for determining and mitigating supply chain risks in procurements involving controlled unclassified information, information technology, embedded information technology, and telecommunications.

FAR Case 2019-014, Strengthening America's Cybersecurity Workforce, will implement Executive Order 13870, America's Cybersecurity Workforce, which requires agencies to incorporate the National Initiative for Cybersecurity Education (NICE) Framework in contracts for information technology and cybersecurity services. Reporting requirements will be added to contracts to allow agencies to evaluate whether contractor personnel have the necessary knowledge and skills to perform tasks specified in information technology and cybersecurity services contracts.

Rulemakings That Streamline Regulations and Reduce Burdens

FAR Case 2020-004, Application of the MPT to Certain Task or Delivery Orders, will increase the threshold for requiring fair opportunity on orders under multiple-award contracts from \$3,500 to the micro-purchase threshold, unless an exception applies. The increase in the fair opportunity threshold will streamline the acquisitions below the threshold.

FAR Case 2018-014, Increasing Task-order Level Competition, will provide an exception to the requirement to consider price as an evaluation factor, for the award of services to be acquired on an hourly rate basis under certain indefinite-delivery indefinite-quantity contracts and Federal Supply Schedule contracts. Meaningful evaluation of cost and price takes place later, when task or delivery order proposals are evaluated. The exception will allow procurement officials to focus on establishing and evaluating non-price factors at the earlier contract award level, resulting in more meaningful distinctions among offerors.

FAR Case 2018-013, Exemption of Commercial and COTS Item Contracts from Certain Laws and Regulations, will implement revisions to the FAR to exempt commercial and COTS items from laws identified by the FAR Council or Administrator for Federal Procurement Policy. This reduction will allow contractors to use existing commercial practices, reducing compliance costs from requirements unique to the Government.

Rulemakings That Promote Disclosure and Open Government

FAR Case 2020-005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts, will require contracting officers to provide a brief explanation as to why the offeror was unsuccessful, including an evaluation of the significant weak or deficient factors in the offeror's offer, upon written request from an unsuccessful offeror for certain task of delivery orders.

FAR Case 2017-004, Use of Acquisition 360 to Encourage Vendor Feedback, will address soliciting contractor feedback on how well agencies are doing in awarding and administering contracts. This will improve the efficiency and effectiveness of agency acquisition activities.

FAR Case 2016-005, Effective Communication between Government and Industry, encourages agency acquisition personnel to talk to industry.

Rulemakings of Interest to Small Business

FAR Case 2020-013, Certification of Women-Owned Small Businesses, will implement the statutory requirement for certification of women-owned and economically disadvantaged women-owned small businesses participating in the Women-Owned Small Business Program, as implemented by the Small Business Administration in its final rule published May 11, 2020.

FAR Case 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns, will establish an accelerated payment date for small business contractors, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. Additionally for contractors that subcontract with small businesses, the rule will, to the fullest extent permitted by law, establish an accelerated payment date, with a goal of 15 days after receipt of a proper invoice, if: (1) A specific payment date is not established by contract, and (2) the contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor.

FAR Case 2019-007, Update of Historically Underutilized Business Zone Program, will implement SBA's regulatory changes issued in its final rule published on November 26, 2019. The regulatory changes are intended to reduce the regulatory burden associated with the Historically Underutilized Business Zone (HUBZone) Program.

DATED: September 4, 2020.

William F. Clark,

Director,

Office of Government-wide

Acquisition Policy,

Office of Acquisition Policy,

Office of Government-wide Policy.