

## **FEDERAL ACQUISITION REGULATION (FAR)**

The Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space are members of the Federal Acquisition Regulatory Council (FAR Council), and jointly issue and maintain a single Government-wide procurement regulation known as the Federal Acquisition Regulation (FAR). The FAR provides uniform policies and procedures for the acquisition of supplies and services by executive agencies. The FAR Council, which is chaired by the Administrator of Federal Procurement Policy, assists in the direction and coordination of Government-wide procurement policies to be implemented in the FAR.

### **Public Engagement**

The FAR Council engages with the public on rules that will affect the FAR in several ways. First, in addition to publishing abstracts of and anticipated publication dates for upcoming rulemakings in the Office of Information and Regulatory Affairs biannual Unified Agenda, members of the public can track the progress of any open and pending FAR rule via the “Open FAR Cases” report, which is publicly available at [https://www.acq.osd.mil/dpap/dars/far\\_case\\_status.html](https://www.acq.osd.mil/dpap/dars/far_case_status.html). The report is updated on a weekly basis and includes the following information: a case number, title, FAR parts anticipated to be impacted by the rule, a summary of the basis for the rule, and the rule status. Members of the public who are interested in a particular FAR case are encouraged to monitor the Open FAR Cases Report to track where a particular rule is in the rulemaking process.

In addition to the Open FAR Cases report, the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) independently engage with several industry associations on a quarterly basis including, but not limited to, the Aerospace Industries Association, the National Defense Industrial Association, and the Professional Services Council. During these meetings, DoD, GSA, and NASA often provide updates on open FAR cases and association representatives are able to provide feedback from their various members or member groups on upcoming rulemakings.

While developing certain FAR rules, DoD, GSA, and NASA may seek input from the public by publishing in the *Federal Register* an advance notice of proposed rulemaking (ANPR) or a general request for information (RFI). Such notices normally include a summary of the overarching policy objectives of the rule and a list of questions seeking input that will help the Government develop a proposed rule. Information on whether DoD, GSA, and NASA plan on publishing an ANPR or RFI is included in both the Open FAR Cases Report and OIRA's biannual Unified Agenda.

Occasionally, while a proposed or interim FAR rule is out for public comment, DoD, GSA, and NASA may hold a public meeting to provide an overview of the rule and allow the public to provide feedback to the Government in an open forum. Information about whether DoD, GSA, and NASA plan on holding a public meeting on a rule is normally included in the proposed or interim rule when it is published for public comment. Presentations made during the public meeting are included in the rule docket and made publicly available. Information provided during the public meeting is also considered during development of the final rule.

Finally, DoD, GSA, and NASA independently conduct outreach to industry regarding upcoming rulemakings. For example, the GSA Federal Acquisition Service (FAS) holds webinars with its industry partners to provide an update on the current policy landscape, including summaries of upcoming FAR rules expected to have a significant impact on industry. As part of these webinars, which are available to the public at <https://buy.gsa.gov/interact/community/11/activity-feed>, GSA FAS includes information on the rulemaking process, how to monitor FAR and GSA FAR supplement rules, and best practices for submitting public comments.

### **Rulemaking Priorities**

Pursuant to Executive Order 12866, "Regulatory Planning and Review" (September 30, 1993), as reaffirmed and amended in Executive Order 13563, "Improving Regulation and Regulatory Review" (January 18, 2011), and Executive Order 14094, "Modernizing Regulatory Review" (April 6, 2023), the Regulatory Plan and Unified Agenda provide public notice about the FAR Council's

proposed regulatory and deregulatory actions within the Executive Branch. The Fall 2024 Unified Agenda consists of 47 active agenda items.

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:

- Tackle the climate change emergency,
- Advance equity and support underserved, vulnerable and marginalized communities,
- Create and sustain good jobs, lower the costs of products and services, and promote economic resilience in general,
- Improve service delivery, customer experience, and reduce administrative burdens, and
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

#### **Rulemaking that Tackles Climate Change**

FAR Case 2021-015, “Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk,” will require certain Federal contractors to publicly disclose their greenhouse gas emissions, and climate-related financial risk, and science-based reduction targets per section 5(b)(i) of Executive Order 14030, “Climate-Related Financial Risk.”

FAR Case 2021-016, “Minimizing the Risk of Climate Change in Federal Acquisitions,” will ensure agencies minimize the risk of climate change in major procurements per section 5(b)(ii) of Executive Order 14030, “Climate-Related Financial Risk.” An advance notice of proposed rulemaking was published in October of 2021 seeking input from the public on ways in which the Government could consider greenhouse gas emissions and climate risks in Federal procurement. The feedback is being considered in the development of the proposed rule.

### **Rulemaking that Advances Equity and Supports Underserved Communities**

FAR Case 2023-011, "Small Business Participation on Certain Multiple Award Contracts," will update and clarify market research, acquisition planning, small business coordination, and the use of set-asides during the placement of orders against certain multiple award contracts to increase small business participation in certain multiple award contracts.,

FAR Case 2024-007, "Protests of Orders under Certain Multiple Award Contracts," will clarify protest rights with regards to the decision to set aside or not set aside an order for small business under certain indefinite-delivery indefinite-quantity multiple award contracts.

FAR Case 2021-011, "Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors," will permit small business first-tier subcontractors and joint venture members, in certain situations, to submit the past performance and experience they gained under these arrangements with their offers on Federal contracts. Contracting officers will be required to consider the capabilities and past performance provided by first-tier subcontractors and joint venture members in certain situations.

### **Rulemaking that Promotes Economic Resilience**

FAR Case 2020-009, "List of Domestically Nonavailable Articles," will amend the list of domestically nonavailable articles under the Buy American statute and implement requirements related to making future changes to the list. DoD, GSA, and NASA are proposing to remove numerous articles from the nonavailability list as a general reset of the list to remove a presumption of nonavailability as a means to encourage further market research. An advance notice of proposed rulemaking was published in May of 2020 seeking input from the public to assist in identifying domestic capabilities and for evaluating whether some articles on the list at FAR 25.104(a) should be removed because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. The feedback is being considered in the development of the proposed rule.

FAR Case 2022-011, “Nondisplacement of Qualified Workers Under Service Contracts,” will require contractors and subcontractors to offer qualified employees employed under predecessor contracts a right of first refusal of employment under successor contracts in accordance with Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts and the associated Department of Labor regulations at 29 CFR part 9.

FAR Case 2023-020, “Modernizing the Davis-Bacon Act Regulations,” will implement the Department of Labor’s final rule published August 23, 2023 that provides greater clarity on the implementation of the Davis-Bacon Act and enhances its usefulness in the modern economy.

#### **Rulemakings That Improve Service Delivery and Customer Experience**

FAR Case 2021-001, “Increased Efficiencies with Regard to Certified Mail, In-person Business, Mail, Notarization, Original Documents, Seals, and Signatures,” will streamline certain essential contracting procedures by increasing flexibilities and efficiencies with regards to certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology. This rule makes policy flexibilities introduced during the pandemic permanent.

#### **Rulemakings That Support National Security**

FAR Case 2021-017, “Cyber Threat and Incident Reporting and Information Sharing,” will increase the sharing of information about cyber threats and incident information and require certain contractors to report cyber incidents to the Federal Government to facilitate effective cyber incident response and remediation pursuant to sections 2(b), (c), (g)(i) and 8(b) of Executive Order 14028, “Improving the Nation’s Cybersecurity.”

FAR Case 2021-019, “Standardizing Cybersecurity Requirements for Unclassified Information Systems,” will standardize cybersecurity contractual requirements across Federal agencies for

unclassified information systems pursuant to sections 2(i) and 8(b) of Executive Order 14028, Improving the Nation's Cybersecurity.

FAR Case 2023-002, "Supply Chain Software Security," will require suppliers of software available for purchase by Federal agencies to comply with, and attest to complying with, applicable secure software development practices pursuant to section 4(n) and 4(k) of Executive Order 14028, Improving the Nation's Cybersecurity, and Office of Management and Budget Memorandum 22-18 and 23-16.

FAR Case 2023-008, "Prohibition on Certain Semiconductor Product and Services," will implement paragraphs (a), (b), and (h) in section 5949 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 that prohibits executive agencies from procuring or obtaining certain products and services that include covered semiconductor products or services effective December 23, 2027.

**Dated:**

William F. Clark,  
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