

Federal Acquisition Circular 2001-24

This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-24.

Item I—Incentives for Use of Performance-Based Contracting for Services (Interim) (FAR Case 2004-004)

This interim rule amends the FAR to implement Sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 1431 enacts Governmentwide authority to treat performance-based contracts or task orders for services as commercial items if certain conditions are met, and requires agencies to report on performance-based contracts or task orders awarded using this authority. Section 1433 amends the definition of commercial items/services to add specific performance-based terminology and to conform to the language added by section 1431. Contracting officers will be able to use FAR Part 12, Acquisition of Commercial Items, and Subpart 37.6, Performance-Based Contracting, for non-commercial services and treat these services as commercial services when specific conditions are met. Agencies will be required to report on performance-based contracts or task orders awarded using this authority.

Item II—Definitions Clause (FAR Case 2002-013)

This final rule revises FAR 2.201 and the clause at 52.202-1 to clarify the applicability of FAR definitions to solicitation provisions and contract clauses. The list of definitions in 52.202-1 is removed and replaced with policy stating that when a solicitation provision or contract clause uses a word or term that is defined in the FAR, the word or term has the meaning given in FAR 2.101 at the time the solicitation was issued. Certain exceptions to this policy are listed in FAR 52.202-1.

Item III—Procurement Lists (FAR Case 2003-013)

This final rule amends the FAR to clarify that the Javits-Wagner O'Day (JWOD) program becomes a mandatory source of supplies and services when the supplies or services have been added to the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.

Item IV—Determining Official for Employment Provision Compliance—Immigration and Nationality Act (INA) (FAR Case 2004-009)

This final rule amends FAR 9.406-2(b)(2) by revising the responsibility for determining when a contractor is not in compliance with the Immigration and Nationality Act (INA) to include both the Attorney General of the United States and the Secretary of Homeland Security.

This rule implements Executive Order 13286 published March 5, 2003, which amended Section 4 of Executive Order 12989 published February 15, 1996.

Debaring officials may now debar a contractor based on a determination by the Secretary of Homeland Security or the Attorney General of the United States.

Item V—Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs) (FAR Case 1999-603)

This final rule amends the FAR in order to incorporate policies and procedures for services under Federal Supply Schedules. The rule—

- Adds a definitions section;
- Adds information regarding the Department of Veterans Affairs delegated authority to establish medical supply schedules;
- Adds language to clarify the differences between an Authorized Federal Supply Schedules (FSS) Pricelist and a FSS publication;
- Adds additional information regarding e-buy, GSA's electronic quote system for the schedules program;
- **Clarifies that competition shall not be sought outside the Federal Supply Schedules;**
- **Adds language to make it clear that the contracting officer placing an order on another agency's behalf is responsible for applying that agency's regulatory and statutory requirements; and that the requiring activity is required to provide information on the applicable regulatory and statutory requirements to the contracting officer;**
- **Adds new coverage on use of statements of work when acquiring services from the schedules;**
- **Requires that when an agency awards a task order requiring a statement of work, that if the award is based on other than price (best value), the contracting officer shall provide a brief explanation of the basis for the award decision to any unsuccessful contractor that requests such information.**
- **Adds language stating that the performance period of Blanket Purchase Agreement (BPA) established under the schedules program may cross option periods on the base contracts;**
- **Refines guidance regarding the use of Governmentwide BPAs;**
- **Adds language to require the ordering activity to document the results of its BPA review;**
- **Adds language that encourages or reminds agencies that they can seek a price reduction at any time, not just when an order exceeds the maximum order threshold;**
- **Adds additional language to allow for consideration of socio-economic status when identifying the potential competitors for an order;**
- **Reinforces documentation requirements generally and adds new guidance addressing the documentation of orders for services and sole source orders;**
- **Adds new coverage to allow agencies to make payment for oral or written orders by any authorized means, including the Governmentwide commercial purchase card;**
- **Reserves the ordering procedures for Mandatory Use Schedules section;**
- **Clarifies the procedures for termination for cause and convenience; and**
- **Reorganizes and revises the subpart text for ease of use.**

Item VI—Designated Countries—New European Communities Member States (FAR Case 2004-008)

This final rule amends the FAR to implement a determination by the United States Trade Representative (USTR) under the Trade Agreements Act that suppliers from the 10 new member states of the European Communities (EC) (*i.e.*, the European Union) are eligible to participate in U.S. Government procurement under the terms and conditions of the World Trade Organization Government Procurement Agreement (WTO GPA). This means that in acquisitions subject to the WTO GPA, the contracting officer can accept offers of eligible products from Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak

Republic, and Slovenia without application of the Buy American Act evaluation factor.

Item VII—Buy American Act—Nonavailable Articles (FAR Case 2003-007)

This final rule amends FAR 25.104(a) to add certain food and textile items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality. This case is based on extensive market research by the Defense Logistics Agency. Unless the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality, the Buy American Act does not apply to acquisition of these items as end products, and the contracting officer may treat foreign components of the same class or kind as domestic components.

Item VIII—Application of Cost Principles and Procedures and Accounting for Unallowable Costs (FAR Case 2002-006)

This final rule amends the FAR by revising FAR 31.204, Application of principles and procedures, to improve clarity and structure. The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, e.g., price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item IX—Gains and Losses, Maintenance and Repair Costs, and Material Costs (FAR Case 2002-008)

This final rule amends the FAR by deleting the cost principle at FAR 31.205-24, Maintenance and repair costs, because either Cost Accounting Standards (CAS) or Generally Accepted Accounting Practices (GAAP) adequately address these costs. The rule also revises the cost principles at FAR 31.205-7, Contingencies; FAR 31.205-26, Material costs; and FAR 31.205-44, Training and education costs, by improving clarity and structure, and removing unnecessary and duplicative language.

The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, e.g., price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item X—Technical Amendments

This amendment makes editorial changes at 8.003(d), 11.102, and 11.202(b), and removes sections 53.301-254 and 53.301-255.