

FEDERAL ACQUISITION CIRCULAR

May 16, 2016

Number 2005-88
Effective May 16, 2016
Looseleaf pages

Federal Acquisition Circular (FAC) 2005-88 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 2005-88 is effective May 16, 2016 except for Items I, II, III, and IV, which are effective June 15, 2016.

(BLANK PAGE)

FAC 2005-88 List of Subjects

<u>Item</u>	<u>Title</u>	<u>Page</u>
I	High Global Warming Potential Hydrofluorocarbons	v
II	Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations	v and vi
III	Basic Safeguarding of Contractor Information Systems	vi
IV	Improvement in Design-Build Construction Process	vi
V	Technical Amendments	vi and vii

(BLANK PAGE)

FAC 2005-88 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—High Global Warming Potential Hydrofluorocarbons (FAR Case 2014-026)

This final rule implements Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high global warming potential—hydrofluorocarbons (HFCs). The rule also requires contractors to report annually the amount of HFCs contained in equipment delivered to the Government or added or taken out of Government equipment under service contracts. This will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693 on Planning for Sustainability in the Next Decade.

This rule applies to small entities because about three-quarters of the affected contractors are small businesses and precluding them would undermine the overall intent of this policy. However, to minimize the impact this rule could have on all businesses, especially small businesses, this rule only requires tracking and reporting on equipment that normally contain 50 or more pounds of HFCs. In addition, this rule does not impose a labeling requirement for products that contain or are manufactured with HFCs, unlike the labeling requirement that is required by statute for ozone-depleting substances.

Replacement pages: THE PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF JUNE 15, 2016.

Item II—Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations (FAR Case 2015-020)

This final rule amends the FAR to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. When FAR Case 2003-022 was published as a rule in 2004, the definition for SAT at FAR 2.101 was changed, but the drafters of the rule also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. This rule reinstates the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Accordingly, this rule provides contracting officers with more flexibility when contracting in support of overseas humanitarian or peacekeeping operations. This final rule does not place any new requirements on small entities.

Replacement pages: THE PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF JUNE 15, 2016.

Item III–Basic Safeguarding of Contractor Information Systems (FAR Case 2011-020)

This final rule amends the FAR to add a new FAR subpart 4.19 and contract clause 52.204-21 for the basic safeguarding of covered contractor information systems, i.e., that process, store, or transmit Federal contract information. The clause does not relieve the contractor of any other specific safeguarding requirement specified by Federal agencies and departments as it relates to covered contractor information systems generally or other Federal requirements for safeguarding controlled unclassified information (CUI) as established by Executive Order 13556. Systems that contain classified information, or CUI such as personally identifiable information, require more than the basic level of protection. This rule will not have a significant economic impact on contractors (including small business concerns) or the Government.

Replacement pages: THE PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF JUNE 15, 2016.

Item IV–Improvement in Design-Build Construction Process (FAR Case 2015-018)

This final rule revises the FAR to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. When a two-phase design-build construction acquisition is valued at greater than \$4 million, section 814 requires the head of the contracting activity to approve a contracting officer determination to select more than five offerors to submit phase-two proposals. The approval level is delegable no lower than the senior contracting official within the contracting activity. This rule change does not place any new requirements on small entities.

Replacement pages: THE PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF JUNE 15, 2016.

Item V–Technical Amendments

Editorial changes are made at FAR 1.106.

Replacement pages: pp. 1.1-5 thru 1.1-8.

Loose-leaf Only Correction

1. Amend section 37.203 by removing from paragraph (d)(2) "TThe contractor is" and adding "The contractor is" in its place.

Replacement pages: pp. 37.2-1 and 37.2-2

(BLANK PAGE)

FAC 2005-88 FILING INSTRUCTIONS

NOTE: The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "1.1-3" is page 3 of subpart 1.1.

Remove Pages

1.1-3 thru 1.1-8

37.2-1 and 37.2-2

Insert Pages

1.1-3 thru 1.1-8

37.1-1 and 37.2-2

(BLANK PAGE)

1.104 Applicability.

The FAR applies to all acquisitions as defined in [Part 2](#) of the FAR, except where expressly excluded.

1.105 Issuance.

1.105-1 Publication and code arrangement.

(a) The FAR is published in—

- (1) The daily issue of the *Federal Register*;
- (2) Cumulated form in the *Code of Federal Regulations* (CFR); and
- (3) A separate loose-leaf edition.

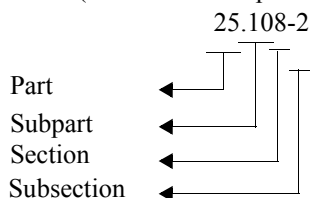
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see [Subpart 1.3](#)). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (e.g., part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):



(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence:

(a)(1)(i)(A)(I)(i)

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

(3) Using the FAR coverage at 9.106-4(d) as a typical illustration, reference to the—

- (i) Part would be “FAR part 9” outside the FAR and “part 9” within the FAR.
- (ii) Subpart would be “FAR subpart 9.1” outside the FAR and “subpart 9.1” within the FAR.
- (iii) Section would be “FAR 9.106” outside the FAR and “9.106” within the FAR.
- (iv) Subsection would be “FAR 9.106-4” outside the FAR and “9.106-4” within the FAR.
- (v) Paragraph would be “FAR 9.106-4(d)” outside the FAR and “9.106-4(d)” within the FAR.

(4) Citations of authority (e.g., statutes or Executive orders) in the FAR shall follow the *Federal Register* form guides.

1.105-3 Copies.

Copies of the FAR in *Federal Register*, loose-leaf, CD-ROM, and CFR form may be purchased from the—

Superintendent of Documents
Government Printing Office (GPO)
Washington, DC 20402.

1.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 ([44 U.S.C. chapter 35](#)) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
3.103	9000-0018
3.11	9000-0183
4.102	9000-0033
4.5	9000-0137
4.605	9000-0145
4.607	9000-0145
4.7	9000-0034
4.9	9000-0097
4.14	9000-0177
4.17	9000-0179
5.405	9000-0036
7.2	9000-0082
8.5	9000-0113
9.1	9000-0011
9.2	9000-0083
14.201	9000-0034
14.202-4	9000-0040
14.202-5	9000-0039
14.205	9000-0037

FAR segment	OMB Control Number	FAR segment	OMB Control Number
14.407	9000-0038	46	9000-0077
14.5	9000-0041	47	9000-0061
15.2	9000-0037	47.208	9000-0056
15.209	9000-0034	48	9000-0027
15.4	9000-0013	49	9000-0028
15.404-1(f)	9000-0080	50	9000-0029
15.407-2	9000-0078	51.1	9000-0031
15.408	9000-0115	51.2	9000-0032
19.7	9000-0006 and	52.203-2	9000-0018
	9000-0007	52.203-7	9000-0091
22.103	9000-0065	52.203-13	9000-0164
22.5	9000-0175	52.203-16	9000-0183
22.8	1250-0003	52.204-3	9000-0097
22.11	9000-0066	52.204-6	9000-0145
22.12	1235-0007 and	52.204-7	9000-0159
	1235-0025	52.204-10	9000-0177
22.14	1250-0005	52.204-12	9000-0145
22.16	1215-0004	52.204-13	9000-0159
22.17	9000-0188	52.204-14	9000-0179
23.602	9000-0107	52.204-15	9000-0179
25.302	9000-0184	52.204-16	9000-0185
27.2	9000-0096	52.204-17	9000-0185
27.3	9000-0095	52.204-18	9000-0185
27.4	9000-0090	52.204-20	9000-0189
28.1	9000-0045	52.207-3	9000-0114
28.2	9000-0045	52.207-4	9000-0082
29.304	9000-0059	52.208-8	9000-0113
30.6	9000-0129	52.208-9	9000-0113
31.205-46	9000-0079	52.209-1	9000-0083
31.205-46(a)(3)	9000-0088	52.209-1(b)	9000-0020
		52.209-1(c)	9000-0083
32.000	9000-0138	52.207-2	9000-0190
32.1	9000-0070 and	52.209-5	9000-0094
	9000-0138	52.209-6	9000-0094
32.2	9000-0138	52.209-7	9000-0174
32.4	9000-0073	52.209-9	9000-0174
32.5	9000-0010 and	52.209-10	9000-0190
	9000-0138	52.209-11	9000-0193
32.7	9000-0074	52.209-12	9000-0193
32.9	9000-0102	52.211-7	9000-0153
32.10	9000-0138	52.211-8	9000-0043
33	9000-0035	52.211-9	9000-0043
36.213-2	9000-0037	52.212-1(k)	9000-0159
36.603	9000-0157	52.212-3	9000-0136
41.202(c)	9000-0125	52.212-3(h)	9000-0094
42.7	9000-0013	52.212-4(t)	9000-0159
42.12	9000-0076	52.212-5	9000-0034
42.13	9000-0076	52.214-14	9000-0047
42.15	9000-0142	52.214-15	9000-0044
44.305	9000-0132	52.214-16	9000-0044
45	9000-0075	52.214-21	9000-0039
		52.214-26	9000-0034

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.214-28	9000-0013	52.222-38	1250-0004 and
52.212-5	9000-0034		1293-0005
52.215-1(c)(2)(iv)	9000-0048	52.222-40	1245-0004
52.215-1(d)	9000-0044	52.222-41	1235-0018 and
52.215-2	9000-0034		1235-0007
52.215-6	9000-0047	52.222-46	9000-0066
52.215-9	9000-0078	52.222-50	9000-0188
52.215-12	9000-0013	52.222-54	1615-0092
52.215-13	9000-0013	52.222-55	1235-0018
52.215-14	9000-0080	52.222-56	9000-0188
52.215-19	9000-0115	52.223-2	9000-0180
52.215-20	9000-0013	52.223-4	9000-0134
52.215-21	9000-0013	52.223-5	9000-0147
52.215-22	9000-0173	52.223-6(b)(5)	9000-0101
52.215-23	9000-0173	52.223-7	9000-0107
52.216-2	9000-0068	52.223-9	9000-0134
52.216-3	9000-0068	52.225-2	9000-0024
52.216-4	9000-0068	52.225-4	9000-0024
52.216-5	9000-0071	52.225-6	9000-0024
52.216-6	9000-0071	52.225-8	9000-0022
52.216-7	9000-0069	52.225-9	9000-0024
52.216-10	9000-0067	52.225-10	9000-0024
52.216-15	9000-0069	52.225-11	9000-0024
52.216-16	9000-0067	52.225-12	9000-0024
52.216-17	9000-0067	52.225-18	9000-0161
52.219-9	9000-0006 and	52.225-21	9000-0024
	9000-0007	52.225-23	9000-0024
52.219-10	9000-0006	52.225-26	9000-0184
52.219-28	9000-0163	52.227-2	9000-0096
52.219-29	3245-0374	52.227-6	9000-0096
52.219-30	3245-0374	52.227-9	9000-0096
52.222-2	9000-0065	52.227-11	9000-0095
52.222-4	1215-0023	52.227-13	9000-0095
52.222-6	1215-0023	52.227-14	9000-0090
52.222-8	1235-0008 and	52.227-15	9000-0090
	1235-0018	52.227-16	9000-0090
52.222-11	9000-0014	52.227-17	9000-0090
52.222-17	1235-0007 and	52.227-18	9000-0090
	1235-0025	52.227-19	9000-0090
52.222-18	9000-0155	52.227-20	9000-0090
52.222-21	1250-0003	52.227-21	9000-0090
52.222-22	1250-0003	52.227-22	9000-0090
52.222-23	1250-0003	52.227-23	9000-0090
52.222-25	1250-0003	52.228-1	9000-0045
52.222-26	1250-0003	52.228-2	9000-0045
52.222-27	1250-0003	52.228-12	9000-0135
52.222-32	9000-0154	52.228-13	9000-0045
52.222-35	1250-0004	52.228-14	9000-0045
52.222-36	1250-0005	52.228-15	9000-0045
52.222-37	1293-0004 and	52.228-16	9000-0045
	1293-0005	52.229-2	9000-0059
		52.230-6	9000-0129

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.232-1	9000-0070	52.246-6	9000-0077
52.232-2	9000-0070	52.246-7	9000-0077
52.232-3	9000-0070	52.246-8	9000-0077
52.232-4	9000-0070		
52.232-5	9000-0102	52.246-12	9000-0077
52.232-6	9000-0070	52.246-15	9000-0077
52.232-7	9000-0070	52.247-2	9000-0053
52.232-8	9000-0070	52.247-6	9000-0061
52.232-9	9000-0070	52.247-29	9000-0061
52.232-10	9000-0070	52.247-30	9000-0061
52.232-11	9000-0070	52.247-31	9000-0061
52.232-12	9000-0073	52.247-32	9000-0061
52.232-13	9000-0010	52.247-33	9000-0061
52.232-14	9000-0010	52.247-34	9000-0061
52.232-15	9000-0010	52.247-35	9000-0061
52.232-16	9000-0010	52.247-36	9000-0061
52.232-20	9000-0074	52.247-37	9000-0061
52.232-22	9000-0074	52.247-38	9000-0061
52.232-27	9000-0102	52.247-39	9000-0061
52.232-29	9000-0138	52.247-40	9000-0061
52.232-30	9000-0138	52.247-41	9000-0061
52.232-31	9000-0138	52.247-42	9000-0061
52.232-32	9000-0138	52.247-43	9000-0061
52.232-33	9000-0144	52.247-44	9000-0061
52.232-34	9000-0144	52.247-48	9000-0061
52.233-1	9000-0035	52.247-51	9000-0057
		52.247-52	9000-0061
52.236-5	9000-0062	52.247-53	9000-0055
52.236-13	9000-0060	52.247-57	9000-0061
52.236-15	9000-0058	52.247-63	9000-0054
52.236-19	9000-0064	52.247-64	9000-0061
52.237-10	9000-0152	52.247-68	9000-0056
52.241-1	9000-0126	52.248-1	9000-0027
52.241-3	9000-0122	52.248-2	9000-0027
52.241-7	9000-0123	52.248-3	9000-0027
52.241-13	9000-0124	52.249-2	9000-0028
52.242-13	9000-0108	52.249-3	9000-0028
52.243-1	9000-0026	52.249-5	9000-0028
52.243-2	9000-0026	52.249-6	9000-0028
52.243-3	9000-0026		
52.243-4	9000-0026	52.250-1	9000-0029
52.243-6	9000-0026	52.251-2	9000-0032
52.243-7	9000-0026	SF 24	9000-0045
52.244-2	9000-0149	SF 25	9000-0045
52.244-2 (i)	9000-0132	SF 25A	9000-0045
52.245-1	9000-0075	SF 28	9000-0001
52.245-9	9000-0075	SF 34	9000-0045
52.246-2	9000-0077	SF 35	9000-0045
52.246-3	9000-0077	SF 273	9000-0045
52.246-4	9000-0077	SF 274	9000-0045
52.246-5	9000-0077	SF 275	9000-0045

FAR segment	OMB Control Number
SF 294	9000-0006
SF 295	9000-0007
SF 330	9000-0157
SF 1403	9000-0011
SF 1404	9000-0011
SF 1405	9000-0011
SF 1406	9000-0011
SF 1407	9000-0011
SF 1408	9000-0011
SF 1413	9000-0014
SF 1416	9000-0045
SF 1418	9000-0045
SF 1428	9000-0075
SF 1429	9000-0075
SF 1435	9000-0012
SF 1436	9000-0012
SF 1437	9000-0012
SF 1438	9000-0012
SF 1439	9000-0012
SF 1440	9000-0012
SF 1443	9000-0010
SF 1444	9000-0089
SF 1445	9000-0089
SF 1446	9000-0089

1.107 Certifications.

In accordance with [41 U.S.C. 1304](#), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

- (a) The certification requirement is specifically imposed by statute; or
- (b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

- (a) *Words and terms.* Definitions in [Part 2](#) apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.
- (b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see [1.102-4\(b\)](#)).
- (c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the

final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes to solicitations and contracts.* Unless otherwise specified—

- (1) FAR changes apply to solicitations issued on or after the effective date of the change;
- (2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and
- (3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the FAR cites a statute, Executive order, Office of Management and Budget circular, Office of Federal Procurement Policy policy letter, or relevant portion of the *Code of Federal Regulations*, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

1.109 Statutory acquisition–related dollar thresholds—adjustment for inflation.

(a) [41 U.S.C. 1908](#) requires that the FAR Council periodically adjust all statutory acquisition-related dollar thresholds in the FAR for inflation, except as provided in paragraph (c) of this section. This adjustment is calculated every 5 years, starting in October 2005, using the Consumer Price Index (CPI) for all-urban consumers, and supersedes the applicability of any other provision of law that provides for the adjustment of such acquisition-related dollar thresholds.

(b) The statute defines an acquisition-related dollar threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of supplies or services by an executive agency, as determined by the FAR Council.

(c) The statute does not permit escalation of acquisition-related dollar thresholds established by:

- (1) [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction);
- (2) [41 U.S.C. chapter 67](#), Service Contract Labor Standards; or
- (3) The United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979 ([19 U.S.C. 2511 et seq.](#)).

(d) A matrix showing calculation of the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available via the Internet at <http://www.regulations.gov> (search FAR Case 2014-022).

1.110 Positive law codification.

(a) Public Law 107-217 revised, codified, and enacted as title 40, United States Code, Public Buildings, Property, and Works, certain general and permanent laws of the United States.

(b) Public Law 111-350 revised, codified, and enacted as title 41, United States Code, Public Contracts, certain general and permanent laws of the United States.

(c) The following table provides cross references between the historical titles of the acts, and the current reference in title 40 or title 41.

<u>Historical Title of Act</u>	<u>Division/Chapter/Subchapter</u>	<u>Title</u>
Anti-Kickback Act	41 U.S.C. chapter 87	Kickbacks
Brooks Architect Engineer Act	40 U.S.C. chapter 11	Selection of Architects and Engineers
Buy American Act	41 U.S.C. chapter 83	Buy American
Contract Disputes Act of 1978	41 U.S.C. chapter 71	Contract Disputes
Contract Work Hours and Safety Standards Act	40 U.S.C. chapter 37	Contract Work Hours and Safety Standards
Davis-Bacon Act	40 U.S.C. chapter 31, Subchapter IV	Wage Rate Requirements (Construction)

<u>Historical Title of Act</u>	<u>Division/Chapter/Subchapter</u>	<u>Title</u>
Drug-Free Workplace Act	41 U.S.C. chapter 81	Drug-Free Workplace
Federal Property and Administrative Services Act of 1949, Title III.	41 U.S.C. Div. C of subtitle I*	Procurement
Javits-Wagner-O'Day Act	41 U.S.C. chapter 85	Committee for Purchase from People Who Are Blind or Severely Disabled
Miller Act	40 U.S.C. chapter 31, subchapter III	Bonds
Office of Federal Procurement Policy Act	41 U.S.C. Div. B of subtitle I**	Office of Federal Procurement Policy
Procurement Integrity Act	41 U.S.C. chapter 21	Restrictions on Obtaining and Disclosing Certain Information
Service Contract Act of 1965	41 U.S.C. chapter 67	Service Contract Labor Standards
Truth in Negotiations Act	41 U.S.C. chapter 35	Truthful Cost or Pricing Data
Walsh-Healey Public Contracts Act	41 U.S.C. chapter 65	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000.

* Except sections 3302, 3501(b), 3509, 3906, 4710, and 4711.

** Except sections 1704 and 2303.

Subpart 37.2—Advisory and Assistance Services

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart applies to contracts, whether made with individuals or organizations, that involve either personal or nonpersonal services.

37.201 Definition.

“Covered personnel” means—

(1) An officer or an individual who is appointed in the civil service by one of the following acting in an official capacity—

- (i) The President;
- (ii) A Member of Congress;
- (iii) A member of the uniformed services;
- (iv) An individual who is an employee under

[5 U.S.C. 2105](#);

(v) The head of a Government-controlled corporation; or

(vi) An adjutant general appointed by the Secretary concerned under [32 U.S.C. 709\(c\)](#).

(2) A member of the Armed Services of the United States.

(3) A person assigned to a Federal agency who has been transferred to another position in the competitive service in another agency.

37.202 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Routine information technology services unless they are an integral part of a contract for the acquisition of advisory and assistance services.

(b) Architectural and engineering services as defined in [40 U.S.C. 1102](#).

(c) Research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological, or other phenomena.

37.203 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to [37.205](#), agencies may contract for advisory and assistance services, when essential to the agency’s mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

or

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation; or

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

(d) *Limitation on payment for advisory and assistance services.* Contractors may not be paid for services to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless—

(1) Neither covered personnel from the requesting agency, nor from another agency, with adequate training and capabilities to perform the required proposal evaluation, are readily available and a written determination is made in accordance with [37.204](#);

(2) The contractor is a Federally-Funded Research and Development Center (FFRDC) as authorized in [41 U.S.C. 1709\(c\)](#) and the work placed under the FFRDC’s contract meets the criteria of [35.017-3](#); or

(3) Such functions are otherwise authorized by law.

37.204 Guidelines for determining availability of personnel.

(a) The head of an agency shall determine, for each evaluation or analysis of proposals, if sufficient personnel with the requisite training and capabilities are available within the agency to perform the evaluation or analysis of proposals submitted for the acquisition.

(b) If, for a specific evaluation or analysis, such personnel are not available within the agency, the head of the agency shall—

(1) Determine which Federal agencies may have personnel with the required training and capabilities; and

(2) Consider the administrative cost and time associated with conducting the search, the dollar value of the procurement, other costs, such as travel costs involved in the use of such personnel, and the needs of the Federal agencies to make management decisions on the best use of available personnel in performing the agency's mission.

(c) If the supporting agency agrees to make the required personnel available, the agencies shall execute an agreement for the detail of the supporting agency's personnel to the requesting agency.

(d) If the requesting agency, after reasonable attempts to obtain personnel with the required training and capabilities, is

unable to identify such personnel, the head of the agency may make the determination required by [37.203](#).

(e) An agency may make a determination regarding the availability of covered personnel for a class of proposals for which evaluation and analysis would require expertise so unique or specialized that it is not reasonable to expect such personnel to be available.

37.205 Contracting officer responsibilities.

The contracting officer shall ensure that the determination required in accordance with the guidelines at [37.204](#) has been made prior to issuing a solicitation.