

FAR Update Alert
Issuance of Federal Acquisition Circular 2005-58 and 2005-59
and Proposed Rule on Labor Executive Order

This *FAR Update Alert*, prepared by the Federal Acquisition Regulatory Council (FAR Council), is designed to help improve general awareness of regulatory activities within the acquisition workforce. This *Alert* highlights a notable proposed rule recently published for public comment and interim and final rules¹ published in recently released Federal Acquisition Circulars: [2005-58 \(published April 18, 2012, 77 FR 23364\)](#) and 2005-59 ([published May 10, 2012, 77 FR 27546](#)).

We have included hyperlinks so those that need more information will have it at their fingertips. We encourage acquisition managers and policy officials to disseminate this *Alert* widely across their acquisition workforce.²

Actions Highlighted in this Alert

Labor Policies

- Would require an incoming service contractor and its subcontractors to offer employees of the outgoing incumbent) contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

Biobased Procurements

- Requires contractor reporting on biobased products purchased under service and construction contracts.

Small Business Contracting

- Requires a written justification and approval before awarding a sole-source contract over \$20 million under the 8(a) program

Foreign Acquisition

- Prohibits contracts with persons that export certain sensitive technology to Iran.
- Prohibits contract awards with FY 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or any of its subsidiaries.
- Implements new trade agreement with Colombia.

Revisions of Cost Accounting Standards Threshold

- Revises the CAS thresholds to align with the Truth in Negotiations Act (TINA) threshold, currently \$700,000.

¹Proposed rules announce future changes being considered to the Code of Federal Regulations (CFR), include proposed regulatory text, and solicit public comments. Interim rules announce immediate changes to the CFR, include the regulatory text, solicit public comments and are effective immediately upon publication, or on a specified date after publication, but may be amended based in response to an urgent cause. Final rules make permanent changes to the FAR after considering public comment on proposed or interim rules and are effective on a specified date after publication.

²With the assistance of the Federal Acquisition Institute, this notice is being distributed through the Federal Acquisition Institute Training Application System (FAITAS). If you are receiving this alert directly from FAITAS, please note that this communication is not intended as a substitute for training materials or guidance that your agency may provide in connection with the release of FAR rules. You should continue to direct inquiries about rules through the normal channels that your agency has established for FAR-related matters.

Rules at a Glance

Nondisplacement of Qualified Workers Under Service Contracts

[Proposed rule, published on May 3, 2012, FAR Case 2011-028](#)

This proposed rule would amend the FAR to add a new subpart 22.12 and a new clause at FAR 52.222-XX, to implement [Executive Order \(E.O.\) 13495, Nondisplacement of Qualified Workers Under Service Contracts, dated January 30, 2009](#), and the Department of Labor's (DOL) implementing regulations published on August 29, 2011 (see 76 FR 53720). This E.O., which applies to contracts covered by the Service Contract Act, requires an incoming (successor) service contractors and its subcontractors to offer employees of the outgoing incumbent (predecessor) contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified. Consistent with the E.O. and DOL's regulations, the proposed rule provides for limited exemptions and waivers.

FAC 2005-58

Biobased Procurements

[Final Rule, Effective Date May 18, 2012, FAR Case 2010-004](#)

This final rule amends the FAR to implement provisions in the Farm Security and Rural Investment Act which require contractors to report biobased products purchased under service and construction contracts. The Biobased Products Preference Program was originally implemented in 2007 (see 72 FR 63040). This final aligns with the biobased reporting requirement in the [February 21, 2012 Presidential Memorandum, "Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement."](#) This FAR change will enable agencies to monitor compliance with the Federal preference for purchasing biobased products.

Justification and Approval of Sole-Source 8(a) Contracts

[Final Rule, Effective Date April 18, 2012, FAR Case 2009-038](#)

This rule finalizes an interim rule, published in the Federal Register at 76 FR 14559 on March 16, 2011, which implemented statutory provisions requiring an agency to execute a Justification and Approval (J&A), approved by an appropriate official, before awarding a sole-source contract in an amount over \$20 million under the 8(a) program, and make the J&A public. Prior to enactment of the new statutory requirement, a sole-source award of a new contract made using the 8(a) contracting authority did not require a J&A, regardless of the dollar value. As explained in the preamble to the interim rule, the requirement for a J&A is not intended to serve as a ceiling or a "cap" on sole-source awards over \$20 million for 8(a) contractors. However, the J&A must document the reasons for making a sole-source award rather than a competitive award under the 8(a) program.

Representation Regarding Export of Sensitive Technology to Iran

[Final Rule, Effective Date May 18, 2012, FAR Case 2010-018](#)

This rule finalizes an interim rule, published in the Federal Register at 76 FR 68028 on November 2, 2011, which implemented section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 106 prohibits contracting officers from making a contract award to persons that export certain sensitive technology to Iran.

FAC 2005-59

Prohibition on Contracting With Inverted Domestic Corporations

[Interim Rule, Effective Date May 10, 2012, FAR Case 2012-013](#)

This interim rule implements section 738 of Division C of the Consolidated Appropriations Act, 2012 ([Pub. L. 112-74](#)), which prohibits contracting officers from using Fiscal Year 2012 appropriated funds to contract with any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity. This rule extends an existing prohibition that applied to Fiscal Years 2008 through 2010 funds. The rule also continues certain limited exceptions to the prohibition (see FAR 9.108-2).

Free Trade Agreement—Colombia

[Interim rule, Effective Date May 15, 2012, FAR Case 2012-012](#)

This interim rule implements a new Free Trade Agreement with Colombia (see the United States—Colombia Trade Promotion Agreement Implementation Act ([Pub. L. 112-42](#)) ([19 U.S.C. 3805](#) note)). The Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Colombia

Revision of Cost Accounting Standards Threshold

[Final rule, Effective Date May 10, 2012, FAR Case 2012-003](#)

This final rule revises the cost accounting standards (CAS) applicability threshold from \$650,000 to \$700,000 at FAR 30.201-4 and CAS clauses in FAR 52.230-1 through 52-230-5. This FAR change implements a recent rule of the CAS Board and statutory requirements. In the future, the CAS applicability threshold will be revised every 5 years, when the TINA threshold is revised for inflation.