

FAR COUNCIL PLAN FOR RETROSPECTIVE ANALYSIS OF EXISTING RULES – STATUS UPDATE (January 2014)

Agency Sub-agency	RIN/OMB Control Number	Title of Initiative/ Rule/ICR	Brief Description	Actual Target or Comp. Date	Anticipated savings in costs and/or information collection burdens, together with any anticipated change in benefits (please quantify to the extent feasible, and also specify baseline, time horizon, and affected groups)	Progress updates and anticipated accomplishments	Notes
1. FAR Council	N/A	Application of new regulatory requirements to commercial item acquisitions & small (simplified) purchases	Review approach taken by the FAR Council to identify whether new laws should be applied to acquisitions for commercial items, including commercially available off-the-shelf (COTS) items and acquisitions valued below the SAT	Spring/ Summer 2014	Improved economy and efficiency Reduced barriers to entering the federal marketplace Increased small business participation	The FAR Council has been considering ways to better evaluate the burden of new laws to the acquisition of commercial items, COTS, and small purchases, and ways to minimize such burden if laws were to be applied. As part of this effort, the FAR Council will pilot a process where public input on potential burden is solicited early in the rulemaking process (e.g., before a proposed rule is issued) in connection with the implementation of: (1) Section 865 of the Ike Skeleton National Defense Authorization Act for fiscal year 2011, Public Law 111-383, which calls for a review of regulations addressing the acquisition of services, and (2) Executive Order 13627 to strengthen	FRN will invite public comment on whether additional guidance is needed on services acquisition. The FAR Council published a proposed rule on September 26, 2013 seeking public comment on FAR case 2013-001 to implement Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts and Title XVII of the NDAA of FY 13, Public Law 112-239, “The End Trafficking in Government Contracting.” The public comment period was scheduled to end November 25, 2013.

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						protections against human trafficking in persons in federal contracting	However, it was extended to December 20, 2013. The public comments will be considered in the formulation of a final rule
2. FAR Council	N/A	Improve communication with vendors	Review regulatory requirements governing exchanges with industry before contract award to determine sufficient guidance is included in the FAR about communication with industry.	Summer 2014	Improved economy and efficiency Reduced barriers to entry	OFPP issued a two Memorandums – (1) issued on February 2, 2011, entitled “Myth-Busting”: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process, and (2) issued on May 7, 2012, entitled “Myth-Busting 2”: Addressing Misconceptions and Further Improving Communication During the Acquisition Process.	FAR Council is reviewing coverage in FAR 15.201 and FAR 15.306 to assess if there are opportunities to clarify guidance so that agencies take advantage of flexibilities for enhanced vendor communication.
3. FAR Council	N/A	Reduce number of competitions that result in only one offer	Consider whether tailored regulatory changes might assist agencies in	Winter 2014	Reduce exposure to high risk contracting	The FAR Council is exploring options for reducing the number of competitions resulting in only one offer, which could include clarifying	The FAR Council is also reviewing DoD’s supplement to the FAR, DFARS rule 2011-D013, addressing one bid (one

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			their efforts to increase contractor interest in competitions that have received only one offer.		Better pricing and terms and conditions through improved use of competition	the role of the competition advocate and/or the use of elevated review and approvals, improved up front analysis of the factors that influence industry bid/no-bid decisions, and improved government outreach and vendor engagement.	offer) competition. The comment period closed on Sept 23, 2011, and re-opened until Oct 7, 2011. DoD’s final rule was published on Jun 29, 2012.
4. FAR Council	N/A	Revisit process for reviewing past performance information	Consider benefits and drawbacks of reducing the time a contractor has to submit comments, rebuttals, or additional information pertaining to past performance Consider ways to enhance past performance policy to increase	Spring/ Summer 2014	Improved economy and efficiency	FAR Case 2012-028, Contractor Comment Period-- Past Performance Evaluations would reduce the time a contractor has to rebut a performance assessment before the assessment is made available to other agencies in the Past Performance Information Retrieval System.	The FAR Council published a proposed rule on August 7, 2013 seeking public comment on FAR case 2012-028. The comment period closed on October 7, 2013. The comments will be considered in the formulation of a final rule.

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			and improve agency use and reporting of performance information.				
5. FAR Council		Work with SBA to modernize rules for small business set-asides and small business subcontracting plans	Review statutory and regulatory requirements governing set-asides for small businesses and small business subcontracting plans to determine sufficient guidance is included in the FAR	Spring/ Summer 2014	Reduced barriers to entry Increase small business participation	FAR Council issued an interim rule (FAR Case 2011-024, Set Aside for Small Business) on November 2, 2011 to provide agencies with initial guidance to take advantage of set-aside and reserve authorities provided in section 1331 of the Small Business Jobs Act (SBJA) of 2010 while SBA completes drafting and coordination of its final rule. SBA completes its review of public comment on its proposed implementation of several sections of the SBJA of 2010 and issued a final rule on October 21, 2013 with an effective date of December 31, 2013	On October 22, 2013, the FAR Council opened the following cases in responses to SBA finalizing its Small Business rules resulting from the SBJA of 2010: FAR Case 2014-002, Set Asides Under Multiple Award Contracts and Contract Consolidation, which implements section 1311, (addresses the definition of multiple award contracts), section 1313, (addresses Consolidation of Contract Requirements), and section 1331, (addresses small business set-asides

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							<p>under multiple award contracts)</p> <p>FAR Case 2014-003, Small Business Subcontracting Improvements, implements section 1321, which addresses the assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities</p> <p>FAR Case 2014-004 Implements section 1334, which requires a prime contractor that has a subcontracting plan to notify the contracting officer in writing whenever a payment to a</p>

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							subcontractor is reduced or is 90 days or more past due for goods and services provided for the contract and for which the Federal agency has paid the contractor
6. FAR Council	Organizational Conflicts of Interest (OCI) (RIN 9000–AL82) Personal Conflicts Of Interests (PCI)	Restructure rules addressing conflicts of interest – OCIs and PCIs	Consider whether an update is required to enhance OCI coverage (unchanged since 1984) and to implement PCI coverage	Spring/Fall of 2012 - completed Final Rule (FAR Case 2011-001) to be issued in Winter 2014 Contractor Access to Protected Information Proposed Rule (FAR Case	Updated OCI coverage Implemented new PCI coverage will enhance integrity and business ethics.	OCI - The FAR Council is completing its consideration of public comments on the proposed rule as it seeks to clarify rules for addressing the complex risks associated with OCI in a manner that minimizes burden both for industry and government. As part of its review, the FAR Council has made substantial changes to the proposed coverage regarding contractor access to protected information and intends to separate out this coverage from the OCI case and seek additional public	PCI – The FAR Council opened FAR Case 2013-022, Preventing Personal Conflicts of Interest for Contractor Employees to implement section 829 of the NDAA for Fiscal Year 2013 (Pub. L. 112-239). The rule proposes to extend regulations on personal conflicts of interest to contractor employees performing all functions that are closely associated with inherently governmental functions (not just acquisition functions) and to

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				2013-022)-to be issued in Summer 2014.		comment on its changes.	personal services contracts (to the extent such contracts are authorized by law, e.g., legal or medical).

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FAR Council’s Implementation of Executive Orders (EO)

EO No.	Title/Date signed	Description	Action Taken
13563	Improving Regulation and Regulatory Review (January 2011)	This executive order tasks agency to engage in periodic reviews of existing significant regulations by promoting retrospective analysis of rules that are outmoded, ineffective, insufficient, or excessively burdensome. The EO also requires agencies to maximize opportunities for public comment in the rulemaking process, especially from those who are likely to be affected.	In accordance with the EO, the FAR Council is taking action and developed an implementation plan. In accordance with the plan, OMB and agencies reviewed current prompt payment provisions and identified opportunities to work with OMB on its policy to accelerate payments to small businesses. The FAR Council has also taken action to improve competition in the supply schedules.
13627	Strengthening Protections Against Trafficking in Persons in Federal Contracts (9/25/2012)	This executive order strengthens existing protections to prohibit contractors and subcontractors from engaging in specific trafficking-related activities.	The FAR Council published a proposed rule (FAR Case 2013–001) on September 26, 2013, amending the Federal Acquisition Regulation to strengthen protections against trafficking in persons in Federal contracts. These changes are intended to implement E.O. 13627 and Title XVII of the National Defense Authorization Act for Fiscal Year 2013. The public comments submitted in response to the FAR Case will be considered in the formulation of a final rule.