

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2010-0076, Sequence 8]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-46; Introduction**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005-46. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

**DATES:** For effective dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005-46 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

**LIST OF RULES IN FAC 2005-46**

Item	Subject	FAR Case	Analyst
I .....	Equal Opportunity for Veterans (Interim) .....	2009-007	Woodson
II .....	Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (Interim).	2010-012	Davis
III .....	Termination for Default Reporting .....	2008-016	Parnell
IV .....	Award-Fee Language Revision .....	2008-008	Chambers
V .....	Offering a Construction Requirement-8(a) Program .....	2009-020	Morgan
VI .....	Encouraging Contractor Policies to Ban Text Messaging While Driving (Interim) .....	2009-028	Clark
VII .....	Buy American Exemption for Commercial Information Technology—Construction Material (Interim).	2009-039	Davis

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005-46 amends the FAR as specified below:

**Item I—Equal Opportunity for Veterans (FAR Case 2009-007) (Interim)**

This interim rule with request for comments implements the Department of Labor’s (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule published in the **Federal Register** at 72 FR 44393 on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans’ Readjustment Assistance Act of 1972 (VEVRAA), as amended by the Jobs for Veterans Act (JVA). The rule re-titles FAR subpart 22.13 from “Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans” to “Equal Opportunity for Veterans.” Accordingly, FAR clause 52.222-35 is also renamed “Equal Opportunity for Veterans” and incorporates the new categories and definitions of protected veterans as established by DoL. In addition, the FAR clause at 52.222-37, “Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other

Eligible Veterans” is renamed “Employment Reports on Veterans” and the new DoL requirements for using the VETS-100A report are incorporated. Lastly, the FAR provision at 52.222-38, “Compliance with Veterans’ Employment Reporting Requirements,” is revised to incorporate new title references for FAR 52.222-37 and the new report form VETS-100A.

**Item II—Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (FAR Case 2010-012) (Interim)**

This interim rule amends the FAR by enhancing efforts to enforce sanctions with Iran. The rule implements requirements imposed by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), specifically sections 102 and 106. To implement section 102, the FAR will require certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. This rule also partially implements section 106 of Public Law 111-195, which imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of Section 106 in FAR

Case 2010-018. This rule will have little effect on United States small business concerns, because such dealings with Iran are already prohibited in the United States.

**Item III—Termination for Default Reporting (FAR Case 2008-016)**

This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR parts 8, 12, 15, 42, and 49. The purpose of the rule is to establish procedures for contracting officers to provide contractor information into the Federal Awardee Performance & Integrity Information System (FAPIIS) module of Past Performance Information System (PPIRS). This case sets forth requirements for reporting defective cost or pricing data and terminations for cause or default and any amendments. Evaluation of past performance information, especially terminations, manages risks associated with timely, effective and cost efficient completion of contracts, a key objective of the President’s March 4, 2009, Memorandum on Government Contracting.

**Item IV—Award-Fee Language Revision (FAR Case 2008-008)**

This final rule converts the interim rule published in the **Federal Register** at

74 FR 52856 on October 14, 2009, to a final rule with minor changes.

This final rule amends the FAR to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and section 867 of the Duncan Hunter 2009 National Defense Authorization Act for Fiscal Year 2009. This rule requires agencies to—

(1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) Clarify that a base fee amount greater than zero may be included in a cost-plus-award-fee type contract at the discretion of the contracting officer;

(3) Prescribe narrative ratings that will be utilized in award-fee evaluations;

(4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) Conduct a risk and cost-benefit analysis and consider the results of the analysis when determining whether to use an incentive-fee type contract or not;

(6) Include specific content in the award-fee plans; and

(7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

#### **Item V—Offering a Construction Requirement—8(a) Program (FAR Case 2009–020)**

This final rule amends the FAR to revise FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), specifically FAR 19.804–2(b) to conform to the Small Business Administration (SBA) regulations. The SBA regulation 13 CFR 124.502(b)(2) requires that the offering letter for an open construction requirement be submitted to the SBA District Office for the geographical area where the work is to be performed. The SBA regulation 13 CFR 124.502(b)(3) requires that the offering letter for a construction requirement offered on behalf of a specific participant be submitted to the SBA District Office servicing that concern. This rule revises FAR 19.804–2 accordingly.

#### **Item VI—Encouraging Contractor Policies To Ban Text Messaging While Driving (FAR Case 2009–028) (Interim)**

This interim rule amends the FAR to implement Executive Order 13513, entitled “Federal Leadership on

Reducing Text Messaging while Driving,” which was issued on October 1, 2009 (74 FR 51225, October 6, 2009). Section 4 of the Executive order requires each Federal agency, in procurement contracts, entered into after the date of the order, to encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Section 4 also requires Federal agencies to encourage contractors to conduct initiatives such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts. Contracting officers are encouraged to modify existing contracts to include the FAR clause.

#### **Item VII—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009–039) (Interim)**

This interim rule implements section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

Dated: September 21, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 1, 22, and 52**

**[FAC 2005–46; FAR Case 2009–007; Item I; Docket 2010–0101, Sequence 1]**

**RIN 9000–AL67**

#### **Federal Acquisition Regulation; Equal Opportunity for Veterans**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Department of Labor (DoL) regulations on equal opportunity provisions for various categories of military veterans. This rule sets forth revised coverage and definitions of veterans covered under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA) and includes new reporting requirements established under the VEVRAA and the Jobs for Veterans Act (JVA).

**DATES:** *Effective Date:* September 29, 2010.

*Applicability date:* Contracting officers may modify existing contracts of \$100,000 or more that were awarded or modified on or after December 1, 2003, to require the use of the new VETS–100A form starting with the report filed September 30, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–46, FAR Case 2009–007, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–007” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2009–007.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–007” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005–46, FAR Case 2009–007, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr.