

Procurement Alert Notice

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PRESIDENT’S MESSAGE

On behalf of the BMRA staff, I want to wish each of you a Happy Holiday Season and a Prosperous New Year. I want to focus my message on BMRA’s state more than I normally would at this time of the year. Many changes face us in FY 2007, especially with a new Congress and a different Political Party in control of our Legislative branch, and I want to share my thoughts on the likely impact on BMRA.

As many of you know, the BMRA fiscal year has begun with a very large drop in course offerings due to several factors. Perhaps the most serious factor was the failure of Congress to pass the FY 2007 budget for civilian agencies. Many agencies that sent out requests for quotes, proposals, or invitations for bids were forced to delay or cancel training. Unfortunately, we cannot expect Congress to act on the budgets until after its return in January.

Another serious challenge for BMRA is a limited potential for courses with DOD agencies. DOD employees must go to the Defense Acquisition University (DAU) to take required contracting courses, which are funded by DOD through the DAU. Although we have taught a few courses to DOD organizations, they were not for course requirements that are part of the required DAU curriculum. Outside of the DAU framework, the amount of revenue available from DOD agencies is very limited. The competition for the few courses needed is extremely keen among course providers in the private sector.

We can expect many changes as a result of the new Democratic Congress. I believe there will be an increase in contracting oversight by the new

Congress and as a result the executive agencies are going to have closer oversight. How this will affect training is anybody’s guess, but it’s clear that training is needed. Premium monies are being spent on contracts, ignoring the lowest proposal or bid price. Awards are being made on the basis of Best Value, without any strong evidence as to how the agencies arrived at the Best Value or the objectives of the evaluation.

I believe that there has been less training for contracting personnel and training budgets for contracting courses have become smaller over the past few years. In some cases more money was spent on managing the training programs—in establishing agency universities, for example—than the dollars actually spent on providing training for personnel.

Of course there can be many reasons for this poor budgeting, but I believe a primary reason that monies

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are not available is because they have been directed to fighting the war in Iraq. Unfortunately, many federal contracting abuses that you have read about recently have been associated with this War. Contracting in the aftermath of Hurricane Katrina has also been criticized. Both of these make the news, but they will only propel Congress deeper into procurement oversight activity.

Let's hope that the present situation will be quickly turned around, that civilian agency funding will be forthcoming in the very near future, that more training will be encouraged for the acquisition force, and that the oversight provided by the new Congress will improve, and not impede, procurement process improvements.

Again, I wish all of you a very Happy Holiday Season.

John Lynch
President

CIVILIAN BOARD OF CONTRACT APPEALS

The National Defense Authorization Act for Fiscal Year 2006, enacted January 4, 2005, amended the Office of Federal Procurement Policy Act by adding Section 42. Section 42 established within the General Services Administration the Civilian Board of Contract Appeals (the CBCA or Civilian Board) to hear disputes and claims involving civilian agencies' contracts.

Effective January 6, 2007, the Civilian Board will assume the responsibilities of all the existing Boards of Contract Appeals (BCAs) except the Armed Services Board of Contract Appeals, the Tennessee Valley Authority Board of Contract Appeals, and the newly-established Postal Service Board of Contract Appeals.

Full-time members of any agency Board of Contract Appeals (other than the excluded BCA) will serve as members of the Civilian Board. Additional members will be appointed by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) from a register of applicants maintained by the Administrator of General Services. Members will be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to

section 3105 of title 5, USC, with an additional requirement that members must have had at least five years of experience in public contract law.

Any proceedings pending before an agency BCA other than the excluded BCAs will be continued by the Civilian Board of Contract Appeals, and orders that were issued in any such proceeding by the agency board will continue in effect until modified, terminated, superseded, or revoked by the Civilian Board, by a court of competent jurisdiction, or by operation of law.

FAC-C REQUIREMENTS TAKE EFFECT

Members of the non-defense workforce issued new Contracting Officer (CO) warrants on or after January 1, 2007, regardless of their GS series, must be certified at an appropriate level to support their warrant obligations, pursuant to agency policy.

This requirement does not apply to senior level officials responsible for delegating procurement authority, non-1102s whose warrants are generally used to procure emergency goods and services, or non-1102s whose warrants are limited as to be outside the scope of this program, as determined by the Chief Acquisition Officer (CAO).

Agencies have discretion to make additional warranting requirements, and employees should review carefully agency warranting policy.

CAOs are required to establish agency specific requirements for tying warrant levels to certification levels based on agency needs. However, agencies are encouraged to require a senior level certification for an employee issued an unlimited warrant.

DAWIA AND FAC-C

The Defense Acquisition Workforce Improvement Act (DAWIA), which was signed into law in November 1990, required the DOD to establish education and training standards, requirements, and courses for its acquisition workforce. It established the Defense Acquisition University (DAU).

In April of 2005, OFPP issued Policy Letter 05-01 to establish the framework for doing the same thing government-wide. It required the Federal Acquisition Institute (FAI) to develop a certification program for



contracting professionals in civilian agencies. FAI's response was the Federal Acquisition Certification in Contracting (FAC-C) Program, which was approved in December 2005.

Below is an abbreviated discussion of DAWIA and the FAC-C Program requirements. We encourage all our instructors to become knowledgeable about both¹.

The FAC-C Program applies to all executive agencies except the DOD, which is subject to DAWIA. Policy Letter 05-01 requires civilian agencies to follow the training curriculum established by DOD. Core courses must be those provided by DAU or courses considered equivalent by DAU. Agencies may require agency specific training as part of the elective requirements or continuous learning requirement, but the additional training is not required for certification.

Continuous Learning is important in the FAC-C Program. To maintain FAC-C certification, acquisition professionals will be required to earn 80 continuous learning points (CLPs) of skills currency training every two years beginning October 1, 2007. Acquisition Career Managers (ACMs), or their designees, must monitor the continuous learning requirements for employees holding FAC-Cs to ensure they meet this requirement. A FAC-C certificate will expire if the 80 CLPs are not earned every two years.

Although DOD and OFPP retain responsibility for managing their respective workforces, core competencies ensure that the acquisition community develops common skills. Periodically, competencies are to be updated, expanded, or otherwise modified as necessary. The current competencies are on the FAI website, at www.fai.gov.

Education requirements have not changed. The civilian (non-DOD) and DOD education requirements for the GS-1102 series differ at grades 5 through 12 (or equivalent). In accordance with the Qualification Standard, available on www.opm.gov, persons in non-DOD GS-1102 positions grades 5 through 12 are required to have either 24 semester

hours of business-related education *or* a baccalaureate degree. Persons seeking positions subject to DAWIA must have *both* 24 semester hours of business related education and a baccalaureate degree at all grade levels.

STATE AND LOCAL GOVERNMENT TO USE GSA SCHEDULES

Section 833 of the FY 2007 National Defense Authorization Act, signed into law by President Bush on October 17th, allows state and local governments to use the GSA Federal Supply Schedules to facilitate recovery from natural disasters (when declared by the President pursuant to the Stafford Act), terrorism, or certain types of attacks.

WEBSITE FOR FEDERAL SPENDING UNVEILED

Anyone interested in learning where federal money goes can go to www.FedSpending.org. The site was created by the Office of Management and Budget Watch (OMB Watch). The data for contracts comes from the Federal Procurement Data System, and from the Federal Assistance Award Data System for grants, direct payments, and loans.

GSA AIMS TO DECREASE TIME TO GET LISTED ON ITS SCHEDULES

Lurita Doan, GSA Administrator, has pledged to decrease to 30 days the time required for businesses to get listed on its contracting schedules. GSA plans to acknowledge receipt of letters for schedule applications within 24 hours and update the electronic application submissions tools.

FEDERAL ACQUISITION SERVICE NOW OFFICIAL

From time to time, we have reported GSA's progress in combining the Federal Technology Service and the Federal Supply Service into one organization. On October 6th, President Bush signed the General Services Administration Modernization Act (P.L. 109-313), authorizing the merger of the two organizations within the General Services Administration into the Federal Acquisition Service (FAS). Ms. Doan, GSA Administrator, appointed Jim Williams as the new Commissioner of FAS.

¹ For information on Policy Letter 05-01 and the FAC-C Program, go to www.whitehouse.gov/omb/procurement. For DAWIA, go to www.dau.mil/Library/DAWIA.asp.





FAC SUMMARIES

FAC 2005-12 Summary

Effective August 4, 2006, Federal Acquisition Circular (FAC) 2005-12 amends the Federal Acquisition Regulation (FAR) as indicated below.

Local Community Recovery Act of 2006

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the FAR to authorize set-asides for major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency.

FAC 2005-13 Summaries

Effective September 28, 2006, Federal Acquisition Circular (FAC) 2005-13 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Implement OMB Policy on the Use of Brand Name Specifications

This interim rule requires agencies to publish on the Governmentwide point of entry (GPE) or e-Buy the documentation required by the FAR to support the use of a brand name specification. The rule is intended to limit the use of brand name specifications and provide for maximum competition.

Item II—Information Technology

This final rule amends an interim rule that implemented the Information Technology (IT) Security provisions of the Federal Information Security Management Act of. The rule focuses on the importance of system and data security. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

Item III—Online Representations and Certifications Application (ORCA) Archiving Capability

This interim rule addresses record retention policy where the Online Representations and Certifications Application (ORCA) is used to submit an offeror's representations and certifications. Prospective contractors submit Annual Representations and Certifications via the ORCA. Data in ORCA is archived and electronically retrievable and contracting officers may reference the data in contract files rather than including a paper copy in the file. If an offeror identifies changes to ORCA data, the contracting officer must include a copy of the changes in the contract file.

Item IV—Inflation Adjustment of Acquisition-Related Thresholds

This final rule adjusts acquisition-related thresholds in the FAR for inflation. It implements Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which provides for adjustment every 5 years of acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. This rule also escalates some nonstatutory acquisition-related thresholds.

See separate article on page 6.

Item V—Trade Agreements—Thresholds

This final rule changes the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements with Canada, Mexico, Chile, Singapore, and Australia. These threshold increases occur every two years in order to keep pace with inflation.

Item VI—Reporting of Purchases from Overseas Sources

This interim rule requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies that are manufactured outside the United States. The new provision requests from offerors necessary data regarding place of manufacture. The new provisions will require an offeror to indicate whether the place of manufacture of the end products it expects to



provide in response to the solicitation is predominantly inside or outside the United States. Whenever the place of manufacture for a contract is coded outside the United States, the contracting officer will be required to enter into Federal Procurement Data System (FPDS) the reason for buying items manufactured outside the United States.

Item VII—Exception to the Buy American Act for Commercial Information Technology

This final rule authorizes an exception to the Buy American Act for acquisitions of information technology that are commercial items. The final rule applies to all offerors responding to solicitations for commercial information technology where the Buy American Act previously applied (generally, acquisitions between the micro-purchase threshold and \$193,000).

The effect of this exemption is that the FAR clauses 52.225-1 through FAR 52.225-4 are no longer applicable in acquisition of commercial information technology because the Buy American Act no longer applies. The Free Trade Agreement non-discriminatory provisions are no longer necessary since all products now are treated without the restrictions of the Buy American Act.

The Trade Agreements provision and clause at FAR 52.225-5 and FAR 52.225-6 are still necessary when the Trade Agreements Act applies (acquisitions above \$193,000). The Trade Agreements provision and clause already waive applicability of the Buy American Act for eligible products and are needed to implement the restrictions on procurement of noneligible end products. Section 535 and subsequent similar sections waived only the Buy information technology.

FAC 2005-14 Summaries

Effective November 22, 2006, FAC 2005-14 amends the FAR as summarized below.

Item I—Common Identification Standard for Contractors

This rule addresses the contractor personal identification requirements in Homeland Security Presidential Directive 12 and Federal Information Processing Standards Publication Number 201. The

primary objectives of are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors who require routine physical access to Federally-controlled facilities, and/or routine access to Federally-controlled information systems.

Item II—Removal of Sanctions Against Certain EU Countries

This rule removes the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement. These sanctions did not apply to small business set-asides, to acquisition below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products, services, and construction that were previously prohibited by the sanctions.

Item III—Free Trade Agreements—Bahrain and Guatemala (Interim)

This interim rule allows contracting officers to purchase the goods and services of Guatemala and Bahrain without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. These trade agreements with Guatemala and Bahrain join the North American Free Trade Agreement (NAFTA), the Australia, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Honduras, and Nicaragua, which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America-United States Free Trade Agreement is \$64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and \$7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA). The threshold for applicability of the Bahrain Free Trade Agreement is \$193,000 (the same as the Morocco FTA and the WTO GPA) and \$8,422,165 for construction (the same as NAFTA).



Item IV—Free Trade Agreements—Morocco

This final rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreements. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements, which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is \$193,000 for supplies and services and \$7,407,000 for construction.

ACQUISITION THRESHOLDS RAISED

Effective September 28, 2006, FAC 2005-13 raised many acquisition-related thresholds. The official FAC summary states, “Often any impact of these threshold increases will be beneficial, by preventing burdensome requirements from applying to more and more small dollar value acquisitions, which are the acquisitions in which small businesses are most likely to participate.” In other words, adjusting thresholds for inflation is intended (but not guaranteed) to benefit small businesses because otherwise fewer and fewer acquisitions will fall under the micro-purchase and simplified acquisition thresholds.

The FAC goes on to say, “One threshold change in this rule which might temporarily impact small business is the increase of the micro-purchase threshold (FAR 2.101) from \$2,500 to \$3,000. The simplified acquisition threshold will not be raised *at this time* [Italics added].”

So, although it’s been obvious for some time, it’s now official: the specific words and numbers in the FAR are a moving target. The principles remain generally constant: some precautions must be taken when spending a few thousand dollars, more stringent rules apply when spending a few hundred thousand dollars, and for more than about half a billion dollars, mostly every rule and restriction applies. But the dollar value of thresholds is changeable.

FAC 05-13 also adjusted other frequently used thresholds:

- The FPDS reporting threshold (FAR 4.602(c)) was raised from \$2,500 to \$3,000.
- Commercial Items test program ceiling (FAR 13.500) was raised from \$5,000,000 to \$5,500,000.
- The cost and pricing data threshold (FAR 15.403-4) was raised from \$550,000 to \$650,000.
- The prime contractor subcontracting plan (FAR 19.702) floor was raised from \$500,000 to \$550,000, but for construction (\$1,000,000) is unchanged.

For the small business named BMRA, there will be an immediate impact: many of our course materials that reference specific threshold dollar values are now “out-of-date”. Given that further changes are imminent, we might not revise the materials immediately. When we do revise, we will follow the lead of the FAR administrators in avoiding such references by substituting general words for specific dollar values as much as possible. For example “\$2,500” will become “the micro-purchase threshold”.

More than ever, the instructor’s role is crucial. We rely on our instructors to teach students not only the purpose and application of the various acquisition thresholds, but also their current value *and* how to find out what the value is in the future. In other words, every course presentation should include the words, “The URL for the FAR is acquisition.gov/far.”

But just to get you started, below is a table of some of the current values. A more detailed matrix can be found at <http://acquisition.gov/far/facframe.html>. Click the link for “2004-033-Thresholds Matrix”.



**SOME ACQUISITION THRESHOLDS
AS OF DECEMBER, 2006**

	Construction	Non-commercial		Commercial
		Supplies	Services	Supplies or Services
Micro-purchase Threshold (FAR 13)	\$2,000	\$3,000	\$2,500	\$3,000
Simplified Acquisition Threshold (FAR 13)	\$100,000	\$100,000	\$100,000	\$5,500,000 (\$11,000,000 for test program items. See FAR 13.5)
Competition requirement (FAR 6)	Over \$2,000	Over \$3,000	Over \$2,500	Over \$3,000
Publicizing: Display notice in public place (FAR 5.101)	Over \$10,000 to \$25,000	Over \$10,000 to \$25,000	Over \$10,000 to \$25,000	Over \$10,000 to \$25,000
Publicizing: Synopsise on GPA (FAR 5.101)	Over \$25,000	Over \$25,000	Over \$25,000	Over \$25,000
Davis Bacon Act Requirements (FAR 22.4)	Over \$2,000*	NA	NA	NA
Service Contract Act Requirements (FAR 22.10)	NA	NA	Over \$2,500*	NA

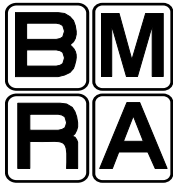
* Does not apply to foreign acquisitions.



Happy Holidays!



From the BMRA Staff



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