



# Procurement Alert Notice

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## PRESIDENT’S MESSAGE: NEW DEVELOPMENTS IN ACQUISITION TRAINING

In August, BMRA celebrated 35 years of being in business. In April, I celebrated my 25<sup>th</sup> year with BMRA. During this time, we have seen many changes in the acquisition field and in acquisition training.

Not too many years ago, firms were contracted by various civilian agencies to develop procurement courses. Today, many acquisition courses are developed by the Defense Acquisition University (DAU) and firms such as BMRA now develop equivalent courses for the civilian agencies at their own cost and risk. Equivalent courses must meet course objectives, which are based on DAU’s Competencies for the Federal Acquisition Workforce. To obtain equivalency, firms must provide a “cross walk” comparing the firm’s course to the DAU course, objective by objective, and submit it to the American Council on Education (ACE).

ACE reviews the courses for a fee, at the request of the contractor. ACE’s Educational Technologists determine whether the courses teach the same competencies and Terminal Learning Objectives as those of the DAU course. If ACE approves the course as equivalent, the firm may offer it to civilian agencies.

The Office of Federal Procurement Policy (OFPP) encourages the Federal Acquisition Institute (FAI, which is DAU’s civilian counterpart) to work with DAU and coordinate these courses with the General Services Administration (GSA) for inclusion in GSA Schedule 69. BMRA is on GSA Schedule 69 to offer these courses.

This represents a big change in the process for offering courses to civilian agencies, and it is one of the reasons that courses have increased in cost over the past few years. We can no longer take an old text book off the shelf, and make a few changes. Many of the changes are significant

and in many cases require a complete rewrite of the material.

There have been many changes in recent years in the method that we use to purchase items. For example, billions of dollars per year are now spent by Government agencies through the Government purchase card method. In the past, these buys were limited to personnel in procurement departments. Now, almost anyone in the organization can buy (if approved by the agency) using the purchase card.

We have also seen changes to contracting procedures for major buys. For example, the Time and Material (T&M) contracts were discouraged as a contracting vehicle for many years; now this method is encouraged by many Government agencies.

Perhaps one of the most important changes is the new focus on leveraging acquisition to achieve mission relevant outcomes. This has resulted in new ways of doing business in the Federal Government and in many state and local

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governments. We have gone from a process-based perspective to a results-oriented view of acquisition. Competencies have been introduced into our training and now all parties are focused on the new central role of the acquisition professional, that role being a “business advisor” role.

Both FAI and DAU have identified and validated professional business and technical competencies central to the acquisition workforce. This has been incorporated into the curriculum that we must teach to ensure that the courses are equivalent to the DAU courses. In December 2003 the Federal Acquisition Institute released a report on the competencies for the Federal Acquisition Workforce. Table 3-1 of the report contains a representation of FAI Professional Business Competencies and the corresponding DoD Competency. You may access this report, titled “Report on Competencies for the Federal Acquisition Workforce Executive Summary,” at [www.fai.gov](http://www.fai.gov).

The changes that are taking place in the acquisition community are frequent and often very different from what we were expected to know and practice in the past. Our instructors are expected to know and teach about a results-oriented view and not the process methods that were used for years. There is no question that changes are with us in



our acquisition business and will continue for years to come. We must be prepared to accept these changes and help our students to make the transitions that are expected of them.

*John Lynch  
President*

## IN-SERVICE TRAINING

Due to economic conditions, particularly the cost of gasoline, we decided not to hold an In-service Training program at BMRA this year.

We still feel it is important to keep our instructors informed on administrative procedures and training information. We continue to keep you informed by the use of the PAN, e-mails, and letters. We also encourage each of you to find and share information electronically that is helpful to you, your colleagues, and the BMRA office staff.

A wealth of information can be shared in this manner. However, we believe that meeting together and sharing information and experience is still a valuable tool. With

this in mind, we hope that the economic conditions next year will allow us to resume annual one-day In-service Training.

## EQUIVALENCY COURSES

BMRA is working on DAU Equivalency courses to offer to civilian agencies, as well as other acquisition courses to be offered in the near future. We are currently preparing the information that must be submitted to the American Council on Education (ACE) for its review and recommended approval. We anticipate that this will be completed in the coming months and we will be ready to present the new courses. These courses include:

- CON 214 – Business Decisions for Contracting;
- CON 215 – Intermediate Contracting for Mission Support;
- CON 216 – Legal Considerations in Contracting;
- CON 217 – Cost Analysis and Negotiation Techniques; and
- CON 218 – Advanced Contracting for Mission Support

For additional information on course offerings, contact Jennifer Ashburn or Mary Ackerman. We will publish course information in our PAN as courses become available.

## PSR TEAMS ARE BUSY

BMRA has performed several Federal Transit Administration (FTA) Procurement System Reviews this summer, with several more to follow before the end of 2008.

The team members on these reviews have more than ten years of experience in conducting PSRs or have experience with FTA grantees in conducting procurements under FTA guidance.

In addition to the experience of the team members, BMRA brings over 30 years of company experience in conducting work for FTA.

## WE ARE LOOKING FOR NTI INSTRUCTORS

BMRA is looking for more faculty members to teach National Transit Institute (NTI) courses. To teach these courses, an instructor must have some experience in conducting acquisitions for a Transit Authority. We prefer an instructor with at least five years of experience with a Transit Authority.



Interested parties may call Tom Mara or John Lynch at BMRA.

## OFFICE OF FEDERAL PROCUREMENT POLICY LETTERS

Below is a list of current Policy Letters issued by the OFPP. If you are interested in the content of these letters you may access them at [http://www.whitehouse.gov/omb/procurement/index\\_policy.html](http://www.whitehouse.gov/omb/procurement/index_policy.html).

- 05-01, Developing and Managing the Acquisition Workforce (April 15, 2005)
- 99-1, On Small Business Procurement Goals (October 8, 1999)
- 93-1, Management Oversight of Service Contracting (May 18, 1994)
- 92-4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services. (November 2, 1992)
- 91-3, Reporting Nonconforming Products (April 9, 1991)
- 80-4, Woman Business Enterprise Program (April 29, 1980)
- 80-2, Supplement No. 1, Regulatory Guidance on Section 211 of Public Law 95-507 (May 29, 1981)
- 80-2, Regulatory Guidance on Section 211 of Public Law 5-507 ( April 29, 1980)
- 80-1, P.L. Section 211, Subcontracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives (April 24, 1980)

You can also obtain a list of Rescinded or Superseded OFPP Policy Letters (of which there are 37) using Goggle or the above-cited email address.

## 2008 NCMA GOVERNMENT CONTRACT MANAGEMENT CONFERENCE

The National Contract Management Association will host its annual conference on November 20<sup>th</sup> and 21<sup>st</sup> at the Bethesda North Marriot, in Bethesda, MD. Attendees at this conference come from the Federal sector as well as from industry, both large and small.

To learn more about this important conference, go to: [cumings@networkmediapartners.mmsend.com](mailto:cumings@networkmediapartners.mmsend.com)

## PAUL DENNETT RESIGNS FROM OFPP

Effective September 2, 2008 Paul Dennett stepped down from his post after 25 months at the Office of Federal Procurement Policy. The OFPP Deputy Administrator Lesley Field will carry out the administrator duties through the end of the Bush Administration.

Ms. Field succeeded Robert Burton as Deputy Administrator in July of this year. Prior to succeeding Burton as the Deputy Administrator, she worked as an OFPP policy analyst.

## INTEREST RATE FOR COST OF MONEY

The interest rate for cost of money for the period from July 1 to December 31, 2008 is 5 1/8%.

## PUMP-AND-DUMP HACKER CONVICTED

Often we read about problems that have been created by computer hackers who create havoc, but we seldom hear about what, if anything, happens to these people. However, recently U.S. authorities sentenced a man from outside of the U.S. to a 2 year jail term and fined him \$362,247.00 for being involved in a scheme of making unauthorized purchases of thinly traded stocks. The man and his accomplices hacked into the Internet accounts of American brokers, sold the victims' holdings, and purchased shares in lightly traded stocks, pumping up their price. After they had manipulated the stock price sufficiently, they swiftly dumped their own holdings for a profit. Nine brokerage firms were affected, as well as many online stock traders.

This conviction is indicative of the international cooperation that is underway to catch hackers, and it gives us some confidence that the "good guys" have the means to investigate and bring hackers to justice.





## FAR CHANGES

### FAC 2005-21 – SUMMARY OF ITEMS

#### Item I—SAFETY Act: Implementation of DHS Regulations

This interim rule implements the SAFETY Act in the FAR. The SAFETY Act provides incentives for development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the SAFETY Act is to ensure that the threat of liability does not deter potential manufacturers or sellers of antiterrorism technologies from developing, deploying, and commercializing technologies that could save lives.

#### Item II—Biobased Products Preference Program

This final rule amends the FAR to require that a procurement preference be afforded biobased products within items designated by the Secretary of Agriculture. This program applies to acquisitions by Federal agencies using Federal funds for procurement, as well as Government contractors that use USDA-designated items in performance of a Government contract. It will provide increased opportunities for entities, both large and small, that manufacture or sell biobased products, while decreasing opportunities for businesses that manufacture or sell similar non-biobased products or provide components for the manufacturing of such products. A list of USDA-designated items is available at <http://www.usda.gov/biopreferred>.

#### Item III—FAR Part 27 Rewrite in Plain Language

This final rule clarifies, streamlines, and updates text and clauses on Patents, Data, and Copyrights (FAR Part 27). This effort focused on rewriting the current FAR language into “plain language,” with the ultimate goal of making the policies and procedures more understandable to the reader.

#### Item IV—Federal Computer Network (FACNET) Architecture

This final rule amends the FAR to remove FACNET references and provide the opportunity to recognize the evolution of alternative technologies, processes, etc. that Federal agencies are using and will use to satisfy their acquisition needs without removing the use of FACNET for Federal agencies that might use the system. Where necessary in the FAR, the term has been replaced with a

more appropriate term that incorporates various electronic data interchange systems.

#### Item V—Exemption of Certain Service Contracts from the Service Contract Act (SCA)

This interim rule amends FAR to exempt certain contracts for services meeting specific criteria from coverage under the Service Contract Act. This rule imposes the DoL criteria and does not utilize the term “commercial services”.

#### Item VI—Local Community Recovery Act of 2006

This interim rule addresses 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. This local area set-aside could be done along with a small business set-aside. The rule also contains requirements for transitioning work to local firms in the geographic area affected by the disaster or emergency and for justifications for expenditures to entities outside the major disaster or emergency area.

#### Item VII—Labor Standards for Contracts Containing Construction Requirements-Contract Pricing Method References

This final rule removes the reference to “R.S. Means Cost Estimating System” as a commercial source for pricing data, providing greater flexibilities for contracting officers when selecting sources of pricing data.

#### Item VIII—Technical Amendments

### FAC 2005-22 – SUMMARY OF ITEMS

#### Item I—Implementation of Section 104 of the Energy Policy Act of 2005

This final rule requires that all acquisitions of energy consuming-products and all contracts that involve the furnishing of energy-consuming products require acquisition of ENERGY STAR® or Federal Energy Management Program (FEMP) designated products. It provides a clause for the Contracting Officer to insert into solicitations and contracts to ensure that suppliers and service and construction contractors recognize when energy-consuming products must be ENERGY STAR® or FEMP-designated.

#### Item II—Contractor Code of Business Ethics and Conduct

This final rule addresses the requirements for a contractor code of business ethics and conduct and the display of Federal agency Office of the Inspector General (OIG)



Fraud Hotline Posters. The rule makes the requirements for a formal training program and internal control system inapplicable to small businesses.

## **FAC 2005-23 – SUMMARY OF ITEMS**

### **Item I—Electronic Products Environmental Assessment Tool (EPEAT)**

This interim rule amends the FAR to require use of the Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors. The interim affects solicitations and contracts for the acquisition of personal computer products, services that require furnishing personal computer products for use by the Government, and services for contractor operation of Government-owned facilities.

### **Item II—Contracts with Religious Entities**

This final rule incorporates the exemption for religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements, permitting religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities are not exempt from other requirements of the executive order.

### **Item III—Performance-Based Payments**

This final rule expands use of performance-based payments as the method of contract financing on Federal Government contracts, and improves the efficiency of performance-based payments when used on these contracts.

## **FAC 2005-24 – SUMMARY OF ITEMS**

### **Item I—Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission**

This final FAR rule addresses the issues of contractor personnel who are providing support to the mission of the U.S. Government in a designated operational area or supporting a diplomatic or consular mission outside the United States, but are not authorized to accompany the U.S. Armed Forces. The rule clarifies that contractor personnel are only authorized to use deadly force in self-defense or in the performance of security functions when use of such force reasonably appears necessary to execute their security mission. The purpose and effect of the rule is to provide consistent guidance and a standardized clause for contractors in a contingency operation or otherwise risky environment.

### **Item II—Numbered Notes for Synopses**

This final rule updates and clarifies policy for synopses of proposed contract actions. It deletes all references to Numbered Notes (Notes) in the FAR and Federal Business Opportunities (FedBizOpps) electronic publication that were left over from the transition from the *Commerce Business Daily*.

### **Item III—Trade Agreements – New Thresholds**

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements.

### **Item IV—New Designated Countries—Dominican Republic, Bulgaria, and Romania**

This final rule allows contracting officers to purchase goods and services of the Dominican Republic without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The threshold for applicability of the Dominican Republic—Central America-United States Free Trade Agreement is \$67,826 for supplies and services (the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and \$7,443,000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). Bulgaria and Romania are also added to the list of World Trade Organization Government Procurement Agreement countries.

### **Item V—FAR Part 30—CAS Administration**

This final rule revises regulations related to the administration of the Cost Accounting Standards (CAS). Among other changes, it streamlines the process for submitting, negotiating, and resolving cost impacts resulting from a change in cost accounting practice or noncompliance with stated practices.

### **Item VI—Common Security Configurations**

This final rule requires agencies to include common security configurations in new information technology acquisitions, as appropriate. It requires agency contracting officers to consult with requiring officials to ensure the proper standards are incorporated in their requirements.

## **FAC 2005-25 – SUMMARY OF ITEMS**

### **Item I—Federal Procurement Data System Reporting**

This interim rule revises the process for reporting contract actions to the Federal Procurement Data System (FPDS).



The rule will allow agencies to obtain Federal procurement reports through FPDS. Using the Federal reports will alleviate the need for individual agencies to collect, verify, and distribute statistics for a host of requirements, such as the Small Business Goaling Report (SBGR), the Performance-Based Acquisition (PBA) report, the Central Contractor Registration (CCR), and the Resource Conservation and Recovery Act (RCRA) Report.

#### **Item II—Electronic Subcontracting Reporting System (eSRS)**

This interim rule requires that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 and Standard Form 295. The eSRS is a web-based system whose purpose is to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

#### **Item III—Revisions to the Defense Priorities and Allocations System (DPAS)**

This final rule amends the language in the FAR to reflect the President's delegation of the Defense Production Act's priorities and allocations authorities in Executive Order 12919, and the current provisions of the Defense Priorities and Allocations System (DPAS) regulations of the Department of Commerce outlined in 15 CFR Part 700. FAR changes incorporated benefit both the Government and industry in the receiving of timely and proper delivery of industrial resources.

#### **Item IV—Use of Products Containing Recovered Materials in Service and Construction Contracts**

This final rule clarifies FAR language regarding the use of products containing recovered materials. It also prescribes a new clause, for use in service or construction contracts, to ensure that contractors deliver and make maximum use of products containing recovered material.

#### **Item V—Representations and Certifications – Tax Delinquencies**

This final rule amends the FAR to add conditions regarding refusal to pay delinquent Federal taxes to standards of contractor responsibility, causes for suspension and debarment, and the certifications regarding debarment, suspension, and proposed debarment. The changes are intended to add clarity regarding the specific circumstances under which tax delinquencies are so serious that suspension or debarment should be considered. The changes originated in response to a request from the Senate Permanent Subcommittee on Investigations.

#### **Item VI—Enhanced Access for Small Business**

This final rule creates a different, higher dollar ceiling enabling small businesses to use the small claims procedure for appealing a contracting officer's final decision. The ceiling under the Contract Disputes Act is \$150,000 or less for small businesses. The ceiling remains at \$50,000 or less for other types of businesses.

#### **Item VII—Technical Amendment**

### **FAC 2005-26 – SUMMARY OF ITEMS**

#### **Item I—Prohibition on Restricted Business Operations in Sudan and Imports from Burma**

This interim rule requires certification that the contractor does not conduct certain business operations in Sudan. This case also updates the list of countries from which most imports are prohibited, to reflect Burma as well as Sudan.

### **FAC 2005-27 – SUMMARY OF ITEMS**

#### **Item I—Correcting Statutory References Related to the Higher Education Act of 1965**

This final rule amends the FAR to reflect the correct public law citations for the definition of "minority institution."

#### **Item II—Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD**

This final rule changes the name of the "Office of Small and Disadvantaged Business Utilization" to the "Office of Small Business Programs" for the Department of Defense.

#### **Item III—Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name**

This final rule amends FAR language to increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies. It also changes the name of the JWOD Program to the AbilityOne Program.

#### **Item IV—Local Community Recovery Act of 2006**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have adopted as final two interim rules that implement amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

#### **Item V—Additional Requirements for Competition Advocate Annual Reports**

This final rule requires that annual reviews by executive agency competition advocates be provided in writing to



both the agency senior procurement executive and the agency chief acquisition officer. It also ensures task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505. The rule provides for one of several initiatives by the Administrator, OFPP, to reinforce the use of competition and related practices for achieving a competitive environment. The rule reinvigorates the role of agencies' competition advocates, strengthens agencies' competition practices, and ensures best value for the taxpayer.

#### **Item VI—Contract Debts**

This final rule amends and reorganizes FAR Subpart 32.6, Contract Debts, and amends associated other FAR coverage, based on the recommendations of the Department of Defense Contract Debt Integrated Process Team, to improve contract debt controls and procedures and to ensure consistency within and between existing regulations. FAR Subpart 32.6 prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable).

#### **Item VII—Subcontractor Requests for Bonds**

This final rule clarifies that the existing regulations at FAR 28.106-4, Contract clause, and 52.228-12, Prospective Subcontractor Requests for Bonds, do not apply to commercial items..

#### **Item VIII—Extension of Authority for Use of Simplified Acquisition Procedures or Certain Commercial Items**

This final rule extends until January 1, 2010, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5,500,000 (\$11 million for acquisitions as described in 13.500(e)).

#### **Item IX—Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (Interim)**

This interim rule implements sections of the National Defense Authorization Act that provide for: (1) Limitation on single award task or delivery order type contracts greater than \$100 million; (2) Enhanced competition for task and delivery orders in excess of \$5 million; and (3) Protest on orders on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or valued in excess of \$10 million.

#### **Item X—Online Representations and Certifications Application Review**

This final rule adopts as final, without change, the interim that revised the prescriptions for the use of 52.223-9 (Estimate of Percentage of Recovered Material Content for EPA-Designated Products) and 52.223-14 (Toxic Chemical Release Reporting). These revisions allow the proper receipt of certification information and ensure compliance with the statutory requirements of 40 CFR Part 247 and 42 U.S.C. 11023.

#### **Item XI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (Interim)**

The subject case is revising the FAR clauses concerning the administration of Cost Accounting Standards (CAS) to maintain consistency between the CAS rules and the FAR.

#### **Item XII—CAS Administration**

This final rule adopts, with minor changes, the proposed rule published in the Federal Register October 3, 2006, amending the FAR to implement revisions to the regulations related to the administration of the Cost Accounting Standards as they pertain to contracts with foreign concerns, including United Kingdom concerns.

#### **Item XIII—Accepting and Dispensing of \$1 Coin**

This final rule implements the Presidential \$1 Coin Act of 2005, which requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of the Presidents of the United States in the order of their service and to continue to mint and issue "Sacagawea-design" coins for circulation. By January 1, 2008, vending machines on any premises owned by the United States, or under the control of any agency or instrumentality of the United States, must be capable of accepting and dispensing \$1 coins and notices of this capability must be displayed on the business premises. An exemption is allowed for vending machines that do not receive currency denominations greater than \$1.

#### **Item XIV—Technical Amendments**





*Don't forget: Daylight Time begins in the United States on the second Sunday in March and ends on the first Sunday in November—  
In 2008, that's **NOVEMBER 2.***



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