

Headquarters Policy Flash

FLASH 2005-14

DATE: January 4, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management
SUBJECT: **Federal Acquisition Circulars (FAC) 2001-26 and 27, Final and Interim Rules Amending the FAR**

SUMMARY: This Policy Flash transmits summary information regarding the revisions to the FAR resulting from FAC 2001-26 and FAC 2001-27 published in the Federal Register at 69 FR 76430 (December 20, 2004) and at 69 FR 77870 (December 28, 2004), respectively. The FACs are available via the internet at <http://www.acqnet.gov/far/FAC/fac2001-26.pdf> and <http://www.acqnet.gov/far/FAC/fac2001-27.pdf>

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A. Federal Acquisition Circular (FAC) 2001-26

1. Electronic Representations and Certifications (Final) (FAR Case 2002-024)

Effective Date: January 1, 2005

What is the purpose of this FAR Case?

This final rule amends the FAR to eliminate the paper based process for the submission of representations and certifications and introduces an Online Representations and Certifications Application (ORCA) website <http://orca.bpn.gov> The final rule requires offerors to:

- Submit representations and certifications (reps. and certs.) electronically via the Business Partner Network (BPN) website; thus, eliminating the need for a paper-based system;
- Update the reps. and certs. as necessary, but at least annually;
- Maintain current and complete reps. and certs.; and

Additionally, the final rule enables contractors to make changes that affect only one solicitation by addressing the established FAR provisions.

How will this affect work processes?

- Eliminates the use of paper based reps. and certs. and specifically tailors an offeror's information to a particular procurement via electronic means.
- Ensures that a prospective contractor completes the electronic reps. and certs. at <http://orca.bpn.gov> in conjunction with the firm's required registration in the Central Contractor Registration (CCR) database.
- Informs prospective offerors of the requirement to provide reps. and certs. via the BPN.

2. Excluded Parties List System Enhancement (Final) (FAR Case 2002-023)

Effective Date: January 19, 2005

What is the purpose of this FAR Case?

This final rule amends the FAR to incorporate the electronic Excluded Parties List System (EPLS). The General Services Administration (GSA) is implementing its

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new searchable electronic list of parties excluded from doing business with the Federal Government via the FAR. The new searchable system eliminates the need for a paper based system and provides for direct agency input of an excluded party from Federal Procurement and Non-procurement Programs.

How will this affect work processes?

- As provided in DEAR Subpart 909.4, Debarment, Suspension, and Ineligibility, general policy and procedure may remain unchanged. However, additional DEAR coverage may be forthcoming to incorporate the collection of added data elements and the direct entry of data on parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified under the non-procurement common rule by agencies or the Government Accountability Office.

3. Special Emergency Procurement Authority (Final) (FAR Case 2003-022)

Effective Date: January 19, 2005

What is the purpose of this FAR Case?

This rule finalizes an interim rule that implements, with changes, Section 1443 of the Services Acquisition Reform Act (SARA) and Section 822 of the Ronald W. Regan National Defense Authorization Act. Jointly, these provisions increase the thresholds for micro-purchase, simplified acquisition, and contracts to be awarded and performed in support of a contingency operation or to facilitate the defense against or the recovery from nuclear, biological, chemical, or radiological attack.

How will this affect work processes?

- As determined by the head of the agency, when cited, the coverage provides contracting officers expanded use of simplified acquisition and commercial items procedures when acquiring supplies and services.

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4. Notification of Employee Rights Concerning Payment of Union Dues of Fees (Interim) (FAR Case 2004-010)

Effective Date: December 20, 2004

What is the purpose of this FAR Case?

This interim rule amends the FAR in implementing Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees, to require Government contractors and subcontractors to post notices in all workplaces. The notice informs employees that under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs or, if not a union member, to pay dues or fees to support activities not related to collective bargaining, contract administration, or grievance adjustment.

How will this affect work processes?

- Requires that the prescribed clause be included in solicitations and contracts as well as Subcontracts for Commercial Items.
- Requires that any complaints relating to the notice be referred to the Department of Labor.
- Requires that any requests for waiver of the posting requirement from prospective contractors or subcontractors be referred to the Secretary of Labor.

5. Mentor Protégé Program-Delegation of Approval Authority for Mentor Protégé Agreements (Final) (FAR Case 2003-010)

Effective Date: January 19, 2005

What is the purpose of this FAR Case?

The final rule amends FAR 19.702, Statutory Requirements, to change the approval authority of Mentor Protégé Agreements to the DOD Military Departments or Defense Agencies.

How will this affect work processes?

- DOE work processes remain unchanged.

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6. Applicability of the Cost Principles and Penalties for Unallowable Costs (Final) (FAR Case 2001-018)

Effective Date: January 19, 2005

What is the purpose of this FAR Case?

The final rule increases the contract dollar threshold for assessing a penalty if the contractor includes expressly unallowable costs in its claim for reimbursement.

How will this affect work processes?

- Requires that a contractor's claim for reimbursement be assessed against FAR Part 31, Cost Principles, for allowability of costs.

7. Technical Amendments

The amendment makes editorial changes to FAR 11.201(d)(2)(i), 41.301(a), 44.203(b)(1), 51.102(c)(1) and in the introductory text of FAR provision 52.219-1 in order to update references.

B. Federal Acquisition Circular (FAC) 2001-27

1. Free Trade Agreements – Australia and Morocco (Interim) (FAR Case 2004-027)

Effective Date: January 1, 2005

What is the purpose of this FAR Case?

This interim rule implements new Free Trade Agreements with Australia and Morocco. In addition, the rule-

- Establishes a table of services excluded from the coverage of the various trade agreements;
- Corrects the threshold for Canadian services;
- Revises FAR terminology relating to international trade agreements and the Trade Agreements Act (TAA); and

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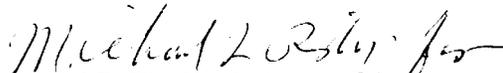
- Revises the FAR clauses that implement application of the Buy American Act and trade preferences for supplies and construction material.

How will this affect work processes?

- Provides contracting officers guidance for procuring products from Australia and Morocco in conformity with the Free Trade Agreements.
- Provides updated guidance on the effect of Free Trade Agreements on all Federal procurements.

Written comments to the interim rulemakings (FAC 2001-26 and FAC 2001-27) are due to this office on or before February 8, 2004. This will allow time to prepare a consolidated response to the General Services Administration, as necessary.

Questions concerning this Flash should be directed to Denise P. Wright at (202) 287-1340 or Denise.Wright@hq.doe.gov


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