

FEDERAL CONTRACTING REVIEW FAR – DFARS CASES - 2017

NCMA-WISCONSIN

2017-YEAR END UPDATE

JANUARY 17, 2018

DARYL ZAHN, NCMA-WI, BOD, PAST PRESIDENT

CERTIFIED FEDERAL CONTRACT MANAGER (CFCM)

MANAGER, CONTRACTS & COMPLIANCE



DRS POWER & CONTROL TECHNOLOGIES, INC., MILWAUKEE, WI

OVERVIEW: FAR/DFARS CHANGES

FEDERAL ACQUISITION REGULATION (FAR)

- FAR IS OVERSEEN BY 2 COUNCILS WORKING TOGETHER UNDER THE OFFICE OF PROCUREMENT POLICY (OFPP)
 - DEFENSE ACQUISITION REGULATORY COUNCIL (DARC) CHAIRED BY DOD WITH NASA
 - CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC) CHAIRED BY GENERAL SERVICES ADMINISTRATION (GSA)
 - GSA LEADS THE FAR SECRETARIAT TO TRACK CASE LOAD / STATUS OF FAR UPDATE REQUIREMENTS

DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS)

- DFARS IS ADMINISTERED BY THE DEPARTMENT OF DEFENSE (DOD)

OVERVIEW: FAR/DFARS CHANGES

- STANDARD PRACTICE: FAR CHANGES ARE PUBLISHED AS PROPOSED IN THE FEDERAL REGISTER AND “THE PUBLIC” IS OFFERED TO REVIEW AND COMMENT
- AFTER THE PROPER TIME-SPAN FOR COMMENTS HAS ELAPSED, THE FAR COUNCILS WILL DO ONE OF THE FOLLOWING:
 - PUBLISH THE FAR UPDATE AS FINAL WITH NO CHANGES TO THE PROPOSED RULE
 - PUBLISH THE FAR UPDATES AS FINAL WITH MINOR UPDATES TO THE PROPOSED RULE BASED ON COMMENTS RECEIVED
 - UPDATE AND RE-PUBLISH A PROPOSED FAR UPDATE BASED ON COMMENTS
 - PUBLISH INTERIM RULES WHILE PROPOSED UPDATES ARE RETURNED TO PUBLIC FOR FURTHER COMMENTS

PUBLICATION OF RULES ON FEDERAL REGISTER



FEDERAL REGISTER

The Daily Journal of the United States Government

Ⓜ Rule

Federal Acquisition Regulation: Establishing a Minimum Wage for Contractors

A Rule by the [Defense Department](#), the [General Services Administration](#), and the [National Aeronautics and Space Administration](#) on 12/04/2015

PUBLISHED DOCUMENT



AGENCY:

Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).



ACTION:

Final rule.



SUMMARY:

DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order (E.O.) Establishing a Minimum Wage for Contractors, and a final rule issued by the Department of Labor (DOL).



DATES:

DOCUMENT DETAILS

Printed version:

[PDF](#)

Publication Date:

12/04/2015

Agencies:

[Department of Defense](#)
[General Services Administration](#)
[National Aeronautics and Space Administration](#)

Dates:

Effective: December 4, 2015.

Effective Date:

12/04/2015

Document Type:

Rule

Document Citation:

80 FR 75915

DATA IN FEDERAL REGISTER POSTING

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at [79 FR 74544](#) on December 15, 2014, to implement Executive Order (E.O.) 13658, Establishing a Minimum Wage for Contractors, and a final rule issued by DOL at [29 CFR part 10](#). A correction to the interim rule was published at [79 FR 75434](#) on December 18, 2014 establishing the rule's effective date as December 15, 2014. For a discussion of the FAR implementation of the E.O., see the interim rule. One respondent submitted a public comment on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment submitted in the development of the final rule. A discussion of the comment follows.

A. Changes

The interim rule is converted to a final rule with only minor changes.

B. Analysis of Public Comment

One respondent submitted one comment.

Comment: Although the respondent was generally supportive of the intent of the E.O. raising the minimum wage for workers performing on or in connection with Federal contracts, the respondent expressed deep concern that the E.O. and the implementing FAR rule will have a negative impact on the employment of individuals with significant disabilities, specifically those who earn commensurate wages under special subminimum wage certificates issued by

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic environmental public health and safety effects distributive impacts

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows: Start Printed Page 75916

This rule is needed to implement Executive Order (E.O.) 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and associated Department of Labor (DOL) regulatory requirements at [29 CFR part 10](#).

The interim rule published December 15, 2014 (and correction published

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending [48 CFR parts 22](#) and 52, which was published in the **Federal Register** at [79 FR 74544](#) on December 15, 2014, is adopted as final with the following changes:

1. The authority citation for [48 CFR parts 22](#) and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Amend section 22.1904 by revising the first two sentences in paragraph (b)(1) and paragraph (b)(2) to read as follows:

OVERVIEW: FAR/DFARS CHANGES

- FAR “CASES” ARE TRACKED BASED ON A NUMBERING SCHEME:
 - FIRST FOUR DIGITS ARE THE GOVERNMENT FISCAL YEAR
 - LAST FOUR DIGITS ARE THE SEQUENTIAL NUMBER OF CASE ISSUED
 - I.E. FAR CASE 2015-0002 IS THE SECOND CASE ISSUED IN FY15
- DFARS “CASES” ARE TRACKED BASED ON SIMILAR SCHEME:
 - FIRST FOUR DIGITS ARE THE GOVERNMENT FISCAL YEAR
 - LAST FOUR DIGITS BEGIN WITH “D” FOR DOD FOLLOWED BY SEQUENTIAL NUMBER OF CASE ISSUED
 - I.E. DFARS CASE 2015-D002 IS THE SECOND CASE ISSUED IN FY15

COMMENTS TO PROPOSED RULINGS:

- IF A PROPOSED RULE WILL AFFECT YOUR COMPANY,
 - READ THE PROPOSAL, DO YOUR BEST TO UNDERSTAND THE RAMIFICATIONS
 - PUT TOGETHER THE BEST THOUGHT OUT STATEMENT OF ISSUES
 - SEND COMMENTS TO THE NOTED LOCATIONS, BY THE SPECIFIED DATES.
- PROFESSIONAL ORGANIZATIONS SUCH AS NCMA, NDIA AND OTHERS WORK IN AN ADVOCACY ROLE FOR THEIR MEMBERS. USE THEM AS WELL.

Federal Acquisition Regulation: Audit of Settlement Proposals

A Proposed Rule by the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration on 09/14/2016



PUBLISHED DOCUMENT



AGENCY:

Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION:

Proposed rule.

SUMMARY:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to raise the dollar threshold requirement for the audit of prime contract settlement proposals and subcontract settlements from \$100,000 to \$750,000.

DATES:

Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before November 14, 2016 to be considered in the formation of the final rule.

ADDRESSES:

Submit comments in response to FAR case 2015-039 by any of the following methods:

- **Regulations.gov:** <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-039". Select the link "Comment Now" that corresponds with "FAR Case 2015-039." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2015-039" on your attached document.
- **Mail:** General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2015-039, in all

DOCUMENT DETAILS

Printed version:

[PDF](#)

Publication Date:

09/14/2016

Agencies:

[Department of Defense](#)
[General Services Administration](#)
[National Aeronautics and Space Administration](#)

Dates:

Interested parties should submit written comments to the

Document Type:

Proposed Rule

Document Citation:

81 FR 63158

Page:

63158-63159 (2 pages)

CFR:

48 CFR 49

Agency/Docket Numbers:

FAR Case 2015-039
Docket No. 2015-0039,
Sequence No. 1

RIN:

9000-AN26

Document Number:

2016-22070

DOCUMENT DETAILS

ENHANCED CONTENT

[regulations.gov](http://www.regulations.gov)

Docket Number:

[FAR-2015-0039](#)

Docket Name:

HOW TO KEEP CURRENT

- FEDERAL REGISTER:
 - [HTTPS://WWW.FEDERALREGISTER.GOV/](https://www.federalregister.gov/)
- PAY OPTIONS
- FREE REVIEW OPTIONS
 - NATIONAL CONTRACT MANAGEMENT ASSOCIATION (NCMA)
 - [HTTP://WWW.WIFCON.COM/RULES.HTML](http://www.wifcon.com/rules.html)
- OPEN FAR / DFARS CASES:
 - [HTTP://WWW.ACQ.OSD.MIL/DPAP/DARS/FAR_CASE_STATUS.HTML](http://www.acq.osd.mil/dpap/dars/far_case_status.html)
 - [HTTP://WWW.ACQ.OSD.MIL/DPAP/DARS/CASE_STATUS.HTML](http://www.acq.osd.mil/dpap/dars/case_status.html)

2017: FAR CHANGES

- FAR CASE 2015-016, PROHIBITION ON REIMBURSEMENT FOR CONGRESSIONAL INVESTIGATIONS AND INQUIRIES, FINAL RULE ISSUED 1/13/2017
 - IMPLEMENT SECTION 857 OF THE CARL LEVIN AND HOWARD P. 'BUCK' MCKEON NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015. THIS SECTION PROVIDES ADDITIONAL REQUIREMENTS RELATIVE TO THE ALLOWABILITY OF COSTS INCURRED BY A CONTRACTOR IN CONNECTION WITH A CONGRESSIONAL INVESTIGATION OR INQUIRY
- FAR CASE 2012-022, CONTRACTS UNDER THE SMALL BUSINESS ADMINISTRATION 8(A) PROGRAM, FINAL RULE ISSUED 1/13/2017
 - AMENDING THE FEDERAL ACQUISITION REGULATION (FAR) TO IMPLEMENT REGULATORY CLARIFICATIONS MADE BY THE SMALL BUSINESS ADMINISTRATION REGARDING THE 8(A) PROGRAM.
- FAR CASE 2015-012, CONTRACTOR EMPLOYEE INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS, FINAL RULE ISSUED 1/13/2017
 - ISSUED A FINAL RULE AMENDING THE FEDERAL ACQUISITION REGULATION (FAR) TO IMPLEMENT A PUBLIC LAW THAT DISAPPROVED THE FINAL RULE, FAIR PAY AND SAFE WORKPLACES (FAR CASE 2014-025), AND AN EXECUTIVE ORDER (E.O.) DATED MARCH 27, 2017, THAT RESCINDED THE PRIOR EXECUTIVE ORDERS AUTHORIZING THAT RULE.

2017: FAR CHANGES

- FAR 2013-014: UNIFORM USE OF LINE ITEMS, FINAL RULE ISSUED 1/13/2017
 - ISSUED A FINAL RULE AMENDING THE FEDERAL ACQUISITION REGULATION (FAR) TO ESTABLISH UNIFORM USE OF LINE ITEMS IN FEDERAL PROCUREMENT.
- FAR 2016-004, ACQUISITION THRESHOLD FOR SPECIAL EMERGENCY PROCUREMENT AUTHORITY, FINAL RULE ISSUED 1/13/2017
 - ISSUED A FINAL RULE AMENDING THE FEDERAL ACQUISITION REGULATION (FAR) TO IMPLEMENT A SECTION OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016 TO RAISE THE SIMPLIFIED ACQUISITION THRESHOLD FOR SPECIAL EMERGENCY PROCUREMENT AUTHORITY.
- FAR 2017-015, REMOVAL OF FAIR PAY AND SAFE WORKPLACES RULE, FINAL RULE, ISSUED 11/08/2017
 - AMENDS THE FEDERAL ACQUISITION REGULATION (FAR) TO IMPLEMENT A PUBLIC LAW THAT DISAPPROVED THE FINAL RULE, FAIR PAY AND SAFE WORKPLACES (FAR CASE 2014-025), AND AN EXECUTIVE ORDER (E.O.) DATED MARCH 27, 2017, THAT RESCINDED THE PRIOR EXECUTIVE ORDERS AUTHORIZING THAT RULE.

2017 DFARS CHANGES

- DFARS CASE 2018-D001, TRADE AGREEMENTS THRESHOLDS., FINAL RULE ISSUED 12/28/2017
 - FINAL RULE AMENDING THE DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) TO INCORPORATE REVISED THRESHOLDS FOR APPLICATION OF THE WORLD TRADE ORGANIZATION GOVERNMENT PROCUREMENT AGREEMENT AND THE FREE TRADE AGREEMENTS, AS DETERMINED BY THE UNITED STATES TRADE REPRESENTATIVE.
- DFARS CASE 2017-D037, NEW QUALIFYING COUNTRY-LATVIA., FINAL RULE ISSUED 12/28/2017
 - DOD IS ISSUING A FINAL RULE AMENDING THE DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) TO ADD LATVIA AS A QUALIFYING COUNTRY.

2017 FAR/DFARS TAKE-AWAY

- THE NUMBER OF FAR / DFARS UPDATES FOR 2017 WAS DRAMATICALLY REDUCED FROM “USUAL” YEARS:
 - ONE OF THE REASONS FOR THIS REDUCTION IS THE REVIEW EFFORTS BEING PERFORMED BY A FEDERAL GOVERNMENT MANDATED GROUP KNOWN AS THE SECTION 809 PANEL.
- WHICH OF COURSE IS THE SEGWAY TO THE DISCUSSION OF THE SECTION 809 PANEL.