



## HIGHLIGHTED REGULATORY CHANGES RELATED TO SMALL BUSINESS PROGRAMS

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Please read carefully - "**Final**" vs "**Interim**" vs "**Proposed**" vs "**Open Case**"

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### SMALL BUSINESS ADMINISTRATION (SBA)

- **SBA RULE: Size Standard Increase [488111 (Air Traffic Control), 488119 (Other Airport Ops), & 488190 (Other Support Activities for Air Transport)]:** Comments received 6/16/2005 to raise from \$6.5M to \$21M; awaiting SBA analysis; DoD OSBP will advocate to expedite turnaround from 90 to 30 days
- **FINAL SBA RULE: SBA Surety Bond Guarantee Program:** Encourages bonds on behalf of SDVOSB by guaranteeing SBA will pay 90% of approved surety's loss; effective 7/25/2007
- **PROPOSED SBA RULE: Small Business Size Standards; Calculation of # of Employees:** Change from rolling average over preceding 12 months to average over last 3 completed cal yrs; **comments due 9/25/2007**
- **PROPOSED SBA RULE: HUBZone Program:** Revises the definition of "employee" to include full-time, part-time, or others (e.g., temps) working minimum of 40 hrs/month; published 1/26/2007; comments closed 2/26/2007
- **PROPOSED SBA RULE: WOSB Federal Contract Assistance Program:** Economically-disadvantaged WOSB & WOSB set-asides; only permitted in certain NAICS (see 4/27/2007 RAND study); 3-year certification requirement; random verification of eligibility; published 6/15/2006; comments closed 7/17/2006; over 100 comments received; *tentatively* final SBA Rule expected by late 2007; effective when implemented in FAR

### REGULATORY CHANGES: *DFARS*

- **FINAL RULE: Berry Amendment Restrictions – Clothing Materials & Components (2006-D031):** expands foreign source restrictions; effective 1/22/2007; comments closed 3/23/2007; published & effective 8/2/2007
- **FINAL RULE: Small Business Programs (2003-D047):** ACO must be notified if any named SB subcontractors are replaced with firms that are not SB; published & effective 4/26/2007
- **FINAL RULE: Tiered Evaluation of Offers (2006-D009):** Implements Section 816 FY2006 National Defense Authorization Act; also known as "cascading"; must first conduct market research; document why set-aside determination could not be made; DFARS & PGI coverage; effective 9/8/2006; comments closed 11/7/2006; 6 comments received; published & effective 8/2/2007
- **REQUEST FOR PUBLIC INPUT – Contract Profit/Fee Policies:** Request for public views on effectiveness of the current DoD profit/fee policies; comments closed 7/23/2007; **Contract Financing:** Request for public views regarding effectiveness of current DoD financing policies; comments closed 7/23/2007 (published 5/22/2007)
- **INTERIM RULE: Report & Regulations on Excessive Pass-Through Charges (2006-D057):** ensures pass-through charges on contracts/subcontracts/task/delivery orders are not excessive in relation to the cost of work performed; provision requires offerors to identify % of work that will be subcontracted & when subcontract costs exceed 70% of total cost of work to be performed, provide info on indirect costs, profit, & value added; not applicable to FFP contracts w/adequate competition/commercial items; effective 4/26/2007; comments closed 6/25/2007
- **INTERIM RULE: Emergency Acquisitions (2006-D036):** adds DFARS 218; includes Available Acquisition Flexibilities & Emergency Acquisition Flexibilities (incl contingency); effective 1/22/2007; 6/1/2007 OIRA reviewing
- **PROPOSED RULE: DoD Reps & Certs in ORCA (2006-D032):** Adds DoD-unique reps & certs to ORCA; comments closed 4/13/2007; 6/20/2007 DAR staff processing
- **PROPOSED RULE: Information Assurance Contractor Training & Certification (2006-D023):** contractor personnel accessing info systems must meet applicable training & certification requirements; comments closed 3/23/2007; 6/29/2007 DAR staff drafting rule
- **OPEN CASE: Mandatory Use of WAWF (2006-D049):** Requires use of WAWF for all invoices, acceptance reports, & other support docs; Case opened 10/17/2006; 6/5/2007 OIRA reviewing
- **OPEN CASE: Procurement Goal for Hispanic-Serving Institutions (2006-D061):** Implements Section 858 FY2007 National Defense Authorization Act; amends 10 U.S.C. 2323 to extend goals for certain institutions of higher education to include Hispanic-serving institutions; Case opened 11/1/2006; DARC reviewed 1/24/2007 –closed w/o action; OSBP & Army requested reconsideration; to be issued as administrative change

### REGULATORY WEBSITES

- Defense Procurement & Acquisition Policy: <http://www.acq.osd.mil/dpap/dars/index.htm>
- Electronic CFR Beta Test Site: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>
- Federal eRulemaking Portal: <http://www.regulations.gov>
- Federal Register: <http://www.gpoaccess.gov/fr/index.html>
- Integrated Acquisition Environment: <http://www.acquisition.gov>



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### REGULATORY CHANGES: FAR

- **FINAL RULE: Government Property (FAC 2005-17):** Simplifies procedures utilizing industry practices; reduces clauses from 19 to 3; published 5/15/2007; effective 6/14/2007
- **INTERIM RULE: Small Business Rerepresentation (FAC 2005-18):** (1) ANY contractor rerepresents size status within 30 days of a novation agreement/merger/acquisition & (2) Rerepresent on long-term contracts (i.e., longer than 5 yrs) prior to 6<sup>th</sup> year & prior to exercising each option thereafter; published 7/5/2007; effective 6/30/2007; applicable to contracts awarded prior to 6/30/2007-contracts to be modified; **comments due 9/4/2007 (7/18/2007 DPAP letter – do not change data in FPDS-NG until systems changed & further notice received)**
- **INTERIM RULE: Local Community Recovery Act of 2006 (FAC 2005-12):** Authorizes set-asides to allow only offerors residing/doing business primarily in geographic area affected by major disaster or emergency; must be based on specific geographic area, within Presidential declaration(s) of disaster or emergency; may be used with small business set-aside; work must be performed by prime/other employees residing/doing business primarily in designated area; services/supplies ≥ 50%; general construction ≥ 15%; specialty construction ≥ 25%; effective 8/4/2006; comments closed 10/3/2006; 7/16/2007 cleared OIRA; FAR staff processing
- **INTERIM RULE: Emergency Acquisitions (FAC 2005-11):** Incidents of national significance, emergency declaration, or major disaster declaration; exemption from CCR/FEDBIZOPPS synopsis; may limit number of sources & full & open competition not required; preference to local organizations, firms, & individuals; effective 7/5/2006; comments closed 9/5/2006; 7/16/2007 awaiting signature on FAC
- **INTERIM RULE: ORCA Archiving Capability (FAC 2005-13):** Contracting Officer able to reference ORCA verification date in contract file; effective 9/28/2006; comments closed 11/27/2006; no comments; FARSEC final prep
- **INTERIM RULE: Use of Brand Name Specs (FAC 2005-13):** Must publish on GPE/e-Buy justification for brand name specs for buys > \$25,000 including open market, FSS, sole source; published & effective 9/28/2006; comments closed 11/27/2006; 6/27/2007 working comments
- **PROPOSED RULE: Representations & Certifications – Tax Delinquency (2006-011):** Adds delinquent taxes/unresolved tax liens to cause for debarment; certify if delinquent tax notice/outstanding liability within 3 yrs preceding offer or if tax lien notice received/outstanding liability/lien not released; published 3/30/2007; comments closed 5/29/2007; report due 9/19/2007
- **PROPOSED RULE: Federal Funding Accountability & Transparency Act (FFATA) – Reporting Requirement of Subcontractor Award Data (2006-029):** Applies to contracts ≥ \$500M awarded & performed in U.S.; requires awardees to report all first tier subcontract awards > \$1M to <http://www.federalspending.gov>; anticipate ultimately to apply to ≥ SAT to report subcontracts > \$25k regardless of award or performance location except classified & commercial item; comments closed 5/21/2007; 7/18/2007 FARSEC final prep
- **PROPOSED RULE: Enhanced Access for Small Business (2006-031):** Provides \$150,000 claim threshold (instead of \$50,000) for small businesses to appeal contracting officer's decision under small claim procedures of the agency board of contract appeals; 6/28/2007 FARSEC final prep
- **OPEN CASE: Socioeconomic Program Parity (2006-034):** Addresses relationship among the small business programs; DAR Council submitted to FAR staff on 6/27/2007
- **OPEN CASE: Electronic Subcontracting Reporting System (eSRS) (2005-040):** Implement electronic subcontract reporting (replaces SF 294/295; flowdown report requirements, etc.); <http://www.esrs.gov>; DoD to implement approx Q3FY08-see <http://www.acq.osd.mil/osbp> for latest; 6/26/2007 DAR staff awaiting changes
- **OPEN CASE: SB Credit for ANCs & Indian Tribes (2004-017):** Implements Section 702, P.L. 107-117/107-206, subkts w/ANCs count toward SB & SDB subkt goals & subkts w/Indian tribes count as SB subkts, regardless of size; published 6/3/2005; comments closed 8/2/2005; 4/30/2007 FARSEC final prep
- **OPEN CASE: HUBZone Program Revisions (2006-005):** Implements SBA Rule published 8/30/2005; adds "base closure areas" & redesignated areas"; must immediately notify KO if material change in status occurs before contract award; may include employees of qualified HUBZone subcontractors towards limitations in subktg: general construction – 50% self or may subkt at least 35% to qualified HUBZone subkts: specialty construction – 50% self or may subkt at least 25% to qualified HUBZone subkts; 5/10/2007 CAAC reviewing

### ITEMS OF INTEREST

- **DPAP/DAU bi-monthly video magazine:** Individual video segments for DFARS/FAR Cases; <http://www.acq.osd.mil/dpap/dars/regulationsnow>