



Legislative Update

MSFC SBELT 31 October 2018



NDAA 2019 – Items to Investigate

- Additional details on Approved Purchasing System activities.
- Other Transactions Data Collection requirements.
- Technical Data Rights – Asserted restrictions on data rights

Final Rule 2018-20706

- The rule changed FAR 4.1102, 4.1103, 52.204-7, and 52.212-1 (k) to require offeror registration in SAM prior to submission of an offer.
- Potential problems – newly formed Joint Ventures.

Proposed Rule 2017-010

- If implemented, DoD, NASA, and the Coast Guard may choose not to include cost or price as an evaluation factor in solicitations for multiple-award contracts for services, as long as an award will be made to each and all qualified offerors.
- Cost and price information will continue to be evaluated before the award of an order placed under a multiple-award contract.
- **Comments due 23 November 2018.**
- More details at <https://www.govinfo.gov/content/pkg/FR-2018-09-24/pdf/2018-20669.pdf>

5 USC 644 (q)(1)

Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

Open FAR Cases as of 10/26/2018

Any Changes to Ones We Reviewed?

Case Number	Part Number	Title	Synopsis	Status
2014-002	10, 13, 15, 16, 19, 2, 4, 42, 52, 7, 8, 9	(S) Set-Asides Under Multiple-Award Contracts	Implements SBA's final rule (78 FR 61114) for sections 1311 and 1331 of the Small Business Jobs Act of 2010 (Pub. L. 111-240), which provides Governmentwide policy for partial set-asides and reserves, and setting aside orders for small business concerns under multiple-award contracts.	02/15/2017 DARC Director tasked Small Business Team to review public comments, draft final FAR rule. Report due 04/12/2017. Report due date extended to 04/25/2018.
2014-002	10, 13, 15, 16, 19, 2, 4, 42, 52, 7, 8, 9	(S) Set-Asides Under Multiple-Award Contracts	Implements SBA's final rule (78 FR 61114) for sections 1311 and 1331 of the Small Business Jobs Act of 2010 (Pub. L. 111-240), which provides Governmentwide policy for partial set-asides and reserves, and setting aside orders for small business concerns under multiple-award contracts.	09/12/2018 CAAC approved draft final FAR rule. DAR and FAR staff resolving draft final FAR rule open issues.

Resolving draft issues

Open FAR Cases as of 10/26/2018

Any Changes to Ones We Reviewed?

Case Number	Part Number	Title	Synopsis	Status
2018-003		(S) Credit for Lower-Tier Small Business Subcontracting	Implements section 1614 of the NDAA for FY 2014, as implemented in the SBA regulations on 12/23/2016 (81 FR 94246), which allows prime contractors to receive credit toward goals in their small business subcontracting plans for subcontracts awarded by their subcontractors.	11/15/2017 DARC Director tasked Small Business Team to draft proposed FAR rule. Report due 01/10/2018. Report due date extended to 05/02/2018.
2018-003		(S) Credit for Lower-Tier Small Business Subcontracting	Implements section 1614 of the NDAA for FY 2014, as implemented in the SBA regulations on 12/23/2016 (81 FR 94246), which allows prime contractors to receive credit toward goals in their small business subcontracting plans for subcontracts awarded by their subcontractors.	09/14/2018 DAR staff notified FAR staff that DARC agreed to draft proposed FAR rule. Awaiting CAAC concurrence.

Awaiting concurrence – David, close?



Open FAR Cases as of 10/26/2018

Any Changes to Ones We Reviewed?

Case Number	Part Number	Title	Synopsis	Status
2017-019		Policy on Joint Ventures	Implements regulatory changes regarding joint ventures made by the Small Business Administration (SBA) in their final rule published in the Federal Register on July 25, 2016 (81 FR 48558). Also clarifies that 8(a) joint ventures are not "certified" in the 8(a) Program and that 8(a) joint venture agreements must be approved by SBA prior to award of an 8(a) contract.	02/14/2018 DARC agreed to draft proposed FAR rule. DAR staff processing.
2017-019		Policy on Joint Ventures	Implements regulatory changes regarding joint ventures made by the Small Business Administration (SBA) in their final rule published in the Federal Register on July 25, 2016 (81 FR 48558). Also clarifies that 8(a) joint ventures are not "certified" in the 8(a) Program and that 8(a) joint venture agreements must be approved by SBA prior to award of an 8(a) contract.	03/20/2018 DAR staff notified FAR staff that DARC agreed to draft proposed FAR rule. Awaiting CAAC concurrence.

Awaiting concurrence



Open FAR Cases as of 10/26/2018

Case Number	Part Number	Title	Synopsis	Status
2017-010	13.106-1, 15.304, 16.505(b)(1), 16.505(b)(2)	(S) Evaluation Factors for Multiple-Award Contracts	Implements section 825 of the NDAA for FY 2017 (Pub. L. 114-328). Section 825 amends 10 U.S.C. 2305(a)(3) to address the requirement to include cost or price to the Government as a factor in the evaluation of proposals for certain multiple-award task- or delivery-order contracts and 2304c(b) to modify the exceptions to fair opportunity. Applicable to DoD, NASA, and Coast Guard.	07/10/2017 CAAC Legal concurrence with draft proposed FAR rule. FAR and DAR staff resolving issues.
2017-010	13.106-1, 15.304, 16.505(b)(1), 16.505(b)(2)	(S) Evaluation Factors for Multiple-Award Contracts	Implements section 825 of the NDAA for FY 2017 (Pub. L. 114-328). Section 825 amends 10 U.S.C. 2305(a)(3) to address the requirement to include cost or price to the Government as a factor in the evaluation of proposals for certain multiple-award task- or delivery-order contracts and 2304c(b) to modify the exceptions to fair opportunity. Applicable to DoD, NASA, and Coast Guard.	09/24/2018 Published proposed FAR rule in Federal Register (83 FR 48271). Public comment period ends 11/23/2018.

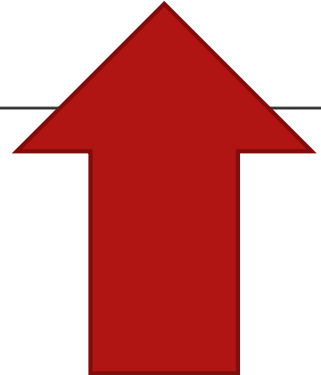
Open for Comment



Open FAR Cases as of 10/26/2018

Case Number	Part Number	Title	Synopsis	Status
2016-011	19, 52	(S) Revision of Limitations on Subcontracting	Implements SBA's final rule (81 FR 34243) for section 1651 of the NDAA for FY 2013 (Pub. L. 112-239), which revised the limitations on subcontracting and the nonmanufacturer rule. Also implements SBA's regulatory clarifications concerning application of the limitations on subcontracting, nonmanufacturer rule, and size determination of joint ventures.	04/02/2018 OFPP concurrence with draft interim FAR rule. FAR staff preparing to send to OIRA.
2016-011	19, 52	(S) Revision of Limitations on Subcontracting	Implements SBA's final rule (81 FR 34243) for section 1651 of the NDAA for FY 2013 (Pub. L. 112-239), which revised the limitations on subcontracting and the nonmanufacturer rule. Also implements SBA's regulatory clarifications concerning application of the limitations on subcontracting, nonmanufacturer rule, and size determination of joint ventures.	09/25/2018 Proposed FAR rule to FARSEC for preparation of FR notice.

“Similarly Situated”



Open FAR Cases as of 4/13/2018

Case Number	Part Number	Title	Synopsis	Status
2016-005	1.102-2, 10.001, 10.002	(S) Effective Communication between Government and Industry.	Implements section 887 of the NDAA for FY 2016 (Pub. L. 114-92), which provides that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry.	02/12/2018 DAR staff notified FAR staff that DARC agreed to draft final FAR rule. Awaiting CAAC concurrence.
2016-005	1.102-2, 10.001, 10.002	(S) Effective Communication between Government and Industry.	Implements section 887 of the NDAA for FY 2016 (Pub. L. 114-92), which provides that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry.	02/12/2018 DAR staff notified FAR staff that DARC agreed to draft final FAR rule. Awaiting CAAC concurrence.

Important Terms

Category Management

https://www.acquisition.gov/Category_Management

Best in Class Contracts

<https://www.gsa.gov/buying-selling/category-management/bestinclass>

Spend Under Management

https://www.gsa.gov/cdnstatic/BIC_%26_SUM_One-pager_252018.pdf