

FEDERAL ACQUISITION CIRCULARS 2005-56 and -57

SUMMARY OF FINAL RULES

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FAC 57- Korea Free trade Agreement

Item I—Women-Owned Small Business (WOSB) Program (FAR Case 2010-015)

This rule adopts as final, with changes, an interim rule published in the Federal Register at 76 FR 18304 on April 1, 2011, which provides a tool to assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small businesses. This case is based on the Small Business Administration's (SBA) regulations establishing the Women-Owned Small Business (WOSB) Program, authorized under section 8(m) of the Small Business Act (15 U.S.C. 637(m)).

Agencies may restrict competition to Economically Disadvantaged Women-Owned Small Business (EDWOSB) concerns, for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which SBA has determined that WOSBs are underrepresented in Federal procurement. For NAICS code industries where WOSBs are not just underrepresented, but substantially underrepresented, agencies may restrict competition to either EDWOSB concerns or to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

This rule may positively affect EDWOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are underrepresented and may positively affect WOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are substantially underrepresented.

A Correction Notice dated March 9, 2012 corrected minor errors.

Item II—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008-030)

This final rule amends the FAR to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), enacted on October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting. Section 864 of the law requires amending the FAR to address the use and management of cost-reimbursement contracts in the following three areas:

1. Circumstances when cost-reimbursement contracts are appropriate.
2. Acquisition plan findings to support the selection of a cost-reimbursement contract.
3. Acquisition resources necessary to award and manage a cost-reimbursement contract.

This rule does not impose any information collection requirements on small business. There is no significant impact on small businesses because this rule is only applicable to internal operating procedures of the Government.

Item III—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007-012)

This final rule adopts, with changes, an interim rule published in the Federal Register at 76 FR 14548 on March 16, 2011, that amended the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 863 requires the FAR to be amended to enhance competition in the purchase of property and services by all executive agencies pursuant to multiple-award contracts (including Federal Supply Schedules (FSS)). This final rule requires an FSS ordering activity to conduct appropriate analysis and document the file to determine price reasonableness when placing an order under a blanket purchase agreement (BPA) with hourly rate services. The final rule also removes the requirement for an ordering activity's competition advocate to approve a contracting officer's annual review of a single-award BPA prior to exercise of an option to extend the term of the BPA. This should benefit contractors because it removes a requirement that is considered to be a restriction on the use of FSS single-award BPAs.

Item IV—Socioeconomic Program Parity (FAR Case 2011-004)

This rule adopts as final, with changes, an interim rule published in the Federal Register at 76 FR 14566 on March 16, 2011, which implemented section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111-240). Section 1347(b) clarifies that there is no order of precedence among the small business socioeconomic programs. The FAR interim rule clarified the existence of socioeconomic parity and that contracting officers may exercise discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a) Business Development Program (8(a)), Historically Underutilized Business Zones (HUBZone) Program, Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, or the Women-Owned Small Business (WOSB) Program. This final rule may have a positive impact on small businesses as it presents the maximum practicable opportunity for small business concerns

qualified under the socioeconomic programs to participate in the performance of contracts, and assist Federal agencies in meeting each of the Government's small business contracting goals.

Item V—Trade Agreements Thresholds (FAR Case 2012-002)

This final rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements. The threshold changes do not have significant cost or administrative impact, because they maintain the status quo by keeping pace with inflation.

Item VI—New Designated Country (Armenia) and Other Trade Agreements Updates (FAR Case 2011-030)

This final rule allows contracting officers to purchase the goods and services of Armenia without application of the Buy American Act if the acquisition is covered by the World Trade Organization Government Procurement Agreement. It also updates the lists of countries that are party to the Agreement on Trade in Civil Aircraft. This rule has no significant impact on small business concerns.

A Correction Notice dated March 9, 2012 corrected minor errors.

Item VII—Government Property (FAR Case 2010-009)

This final rule amends the FAR to clarify reporting, reutilization, and disposal of Government property and the contractor requirements under the Government property clause. The proposed rule was published on April 4, 2011 (76 FR 18497).

The rule specifically impacts contracting officers and contractors by clarifying disposal of Government property. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small business.

Item VIII—Technical Amendments

Editorial changes are made at FAR 19.812, 42.203, and 52.209-9.

Item FAC 57 Korea Free trade Agreement

This interim final rule implements the United States-Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement, but this trade agreement implements a lower procurement threshold. This Free Trade Agreement (FTA) now covers acquisition of supplies and services between \$100,000 and the current WTO GPA threshold of \$202,000, lowering the threshold for--

- Waiver of the applicability of the Buy American statute (41 U.S.C. chapter 83) for some foreign supplies and construction materials from the Republic of Korea; and

- Applicability of specified procurement procedures designed to ensure fairness in the acquisition of supplies and services (see FAR 25.408).

The threshold for the Korea FTA for construction is the same as the threshold for the WTO GPA for construction.

FAR Case 2012-004 - Effective Date: March 15, 2012.