

2018 Recap – Federal Acquisition Circulars

Written by Nick Sanders

Friday, 28 December 2018 00:00 - Last Updated Friday, 28 December 2018 07:50

Starting in 2019 I will be editing a reference book on the FAR, tracking changes made in 2018. Consider this article to be a foretaste of that update.

There were four Federal Acquisition Circulars (FACs) issued in 2018. Interestingly, with the issuance of FAC 2005-99 (June 15, 2018) the numbering reset and the following FAC (December 20, 2018) was numbered 2019-01.

FAC [2005-97](#) was issued January 24, 2018. It contained one final rule (FAR Case 2018-001: Trade Agreements Thresholds) that adjusted “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 predetermined formulae under the agreements.” The final rule made changes to FAR 25.4 (“Trade Agreements”) and other FAR sections that include trade agreement thresholds. It also revised certain solicitation provisions and contract clauses.

FAC [2005-98](#) was issued May 1, 2018. It contained four final rules, as follows:

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FAR Case 2015-039: Audit of Settlement Proposals. Increased the “dollar threshold for the audit of prime contract settlement proposals and subcontract settlements submitted in the event of contract termination, from \$100,000 to align with the threshold in FAR 15.403–4(a)(1) for obtaining certified cost or pricing data, which is currently \$750,000.”

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FAR Case 2017-004: Liquidated Damages Rate Adjustment. Made an inflation adjustment to “the rate of liquidated damages assessed for violations of the overtime provisions of the Contract Work Hours and Safety Standards Act.” The rate to be used is specified at 28 C.F.R. 5.5(b)(2).

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FAR Case 2017-007: Task- and Delivery-Order Protests. Raised the protest threshold “from \$10 million to \$25 million (applicable to DoD, NASA, and the Coast Guard) and [repeals] the sunset

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date for the authority to protest the placement of an order (for the other civilian agencies), which was also previously repealed by the GAO Civilian Task and Delivery Order Protest Authority Act of 2016.”

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FAR Case 2017-008: Duties of Office of Small and Disadvantaged Business Utilization. Amended FAR 19.201 “to update the list of duties for OSDBUs and OSBPs in line with section 15(k) of the Small Business Act. No clauses or provisions are being created or revised by this rule.”

FAC [2005-99](#) was issued June 15, 2018. It contained two interim rules and zero final rules. The two interim rules were:

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FAR Case 2017-018: Violations of Arms Control Treaties or Agreements with the United States. Added a new FAR section, 9.109, to “address the prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States.” Also added a new provision 52.209-13 that requires a contractor certification. Does not apply to acquisitions of commercial items or to acquisitions below the Simplified Acquisition Threshold.

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FAR Case 2018-010: Use of Products and Services of Kaspersky Lab. Added a new FAR section, 4.20, and a related contract clause to “prohibit[] the use of hardware, software, and services of Kaspersky Lab and its related entities by the Federal Government on or after October 1, 2018.”

FAC [2019-01](#) was issued December 20, 2018. It contained one final rule (FAR Case 2015-017: Combatting Trafficking in Persons-Definition of “Recruitment Fees”). The final rule added a definition of “recruitment fees” to FAR 22.1702 and revised the language at 22.1703. It also revised the language of contract clauses 52.212-5, 52.213-4, 52.222-50, and 52.244-6.

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In addition to the foregoing, a late proposed rule was issued December 26, 2018. The proposed rule would implement FAR Case [2017-005](#), entitled “Whistleblower Protection for Contractor Employees.” The proposed rule would “make permanent the pilot program for enhancement of contractor protection from reprisal for sharing certain information.” It would also “clarify” that “that the cost principles at [10 U.S.C. 2324](#) (k) and 41 U.S.C. 4304 and 4310 that prohibit reimbursement for certain legal costs apply to costs incurred by a contractor, subcontractor, or personal services contractor.” The rule-making comments note that “personal services contractors are contractors” and “cost principles generally already apply in the same way to costs incurred by subcontractors as to costs incurred by contractors.”