
Contracting Policy Bulletin

HQ AFSPC/LGCP

May 2001

HQ AFSPC/LGCP's monthly Contracting Policy Bulletin lists the latest updates to the FAR and FAR Supplements. In each issue the changes since the previous issue are highlighted. (For those reading this in Word 7.0, **all policy available on the Internet is hyperlinked directly to the web site where it is located. Just click on the blue text.**) Comments or recommendations regarding this Bulletin may be directed to Ms. Suzanne Snyder, e-mail: suzanne.snyder@peterson.af.mil or DSN 692-5498.

Current and past policy bulletins are posted on the HQ AFSPC/LGC Home Page (<http://www.peterson.af.mil/hqafspc/contracting/>).

Headlines

Preference for performance-based requirements required (FAR)

FAR prohibits use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services (FAR)

Section 508 of the Rehabilitation Act impacts electronic and information technology procurement (FAR)

Activities should transition to FedBizOpps no later than July 30, 2001 (Other Director of Defense Procurement Memos)

Training and APDP Websites (Miscellaneous)

More Checklists Added to AFSPC Homepage (Miscellaneous)

FAR

FACs (Available at <http://farsite.hill.af.mil/regst1.htm#FAC>) or <http://www.arnet.gov/far>

FAC 97-24 correction dated 6 April 01 made changes to the interim rule issued 3 April 0. Correction changes were to paragraph references used in FAC 97-24. FAC 97-24 placed a stay on FAC 97-21.

FAC 97-25 dated April 27, 2001 contains two interim rules which further elevate the need to develop statements of work that are performance based:

ITEM I—Preference for Performance-Based Contracting (FAR Case 2000-307) *Effective 2 May 2001*. This interim rule amends FAR 2.101, Definitions, and 37.102, Policy, to implement Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). The rule affects contracting officers that

buy services by *explicitly establishing a preference for performance-based contracts or task orders*. Section 821(a) establishes, Governmentwide, the following order of precedence when acquiring services--

1. A firm-fixed-price performance-based contract or task order.
2. A performance-based contract or task order that is not firm-fixed-price.
3. A contract or task order that is not performance-based.

Section 821(e)(1) provides a definition for "performance-based" that applies to Section 821(a): "The term "performance-based," with respect to a contract, a task order, or contracting means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work." In addition, the definition of performance-based is moved from FAR 37.101 to FAR 2.101

Item II -- Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000-609) Also *effective May 2, 2001*, this interim rule adds FAR 39.104 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). Section 813 *prohibits* the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless--

1. The contracting officer first determines that the needs of the agency cannot be met without such requirement; or
2. The needs of the agency require the use of a type of contract other than a performance-based contract.

Note: **FAC 97-26** has not yet issued by the FAR Council

FAC 97-27 dated April 25, 2001 with effective date of *June 25, 2001* is a final rule that amends the FAR to implement Section 508 of the Rehabilitation Act of 1973 to incorporate standards developed by the Architectural and Transportation Barriers Compliance Board (also referred to as the "Access Board"). The objective of this rule is to revise the FAR to improve the accessibility of electronic and information technology used by the Federal Government. The standards developed by the Access Board affect Federal employees with disabilities as well as members of the public with disabilities who seek to use Federal electronic and information technologies to access information. There is a website at "<http://www.section508.gov>", providing information from manufacturers and vendors on how they meet Access Board standards. The website reference has been added to the FAR language at Subpart 39.2.

Although some exceptions do apply, this rule places requirements on the acquisition community to identify accessibility standards during market research, requirement development and acquisition planning. In addition, contracting offices that award indefinite-quantity contracts must indicate to ordering offices which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (e.g., vendor's or other exact web page location). Failure of an agency to purchase electronic and information technology that complies with the standards promulgated at 36 CFR part 1194, may result in an individual with a disability filing a complaint alleging that a Federal agency has not complied with the standards.

Individuals may also file a civil action against an agency. The enforcement provision of section 508 takes effect *June 21, 2001*.

For industry this rule establishes that contractors must manufacture, sell, or lease electronic and information technology supplies or services that comply with standards promulgated at 36 CFR part 1194. For many contractors this may simply involve a review of the supply or service with the standards to confirm compliance. For other contractors these standards could require redesign of a supply or service before it can be sold to the Federal Government. According to the Federal Procurement Data System, in fiscal year 2000 there were approximately 17,550 contractors to which the rule will apply.

Electronic and information technology (EIT) has the same meaning as "information technology" except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).

There is a website at "<http://www.section508.gov>", providing information from manufacturers and vendors on how they meet Access Board standards. The website reference has been added to the FAR language at Subpart 39.2.

Applicability Date: For other than indefinite-quantity contracts, this amendment applies to contracts awarded on or after the effective date of *June 25, 2001*. For indefinite-quantity contracts, it is applicable to delivery orders or task orders issued on or after this date.

DFARS

DFARS Change Notices (replaced DACs and Departmental Letters) (Available at <http://www.acq.osd.mil/dp/dars/dfars/changes.htm>)

No New DFARS Change Notices since DCN 20001213 was published on December 13, 2000

Class Deviations (Available at <http://www.acq.osd.mil/dp/dars/classdev.html>)

No new Class Deviations issued since CD 2001-O0001 Suspension of the Price Adjustment for Small Disadvantaged Businesses

Other Director of Defense Procurement Memos (Available at http://www.safaq.hq.af.mil/contracting/policy/ddp_memo.cfm)

A letter entitled Government Wide Point of Entry for Federal Procurement Opportunities dated April 18, 2001 discusses a March 9, 2001 OMB memorandum that re-affirms the necessity to move to a government wide entry point on that date. It states that to meet the October 1, 2001 requirement and provide sufficient time for FedBizOpps to test DoD's synopsis and notice submissions and FedBizOpps' scalability, contracting activities should transition to FedBizOpps no later than July 30, 2001. Ms. Diedre Lee,

Director Defense Procurement stated that unless she specifically authorized otherwise, no DoD action other than classified contracts was exempt from the October 1 deadline for solicitation availability. Information about guidance and content and format for posting notices with Fed BizOps is available electronically at <http://www2.eps.gov/pilotGeneralInfo/Overview.html>

Streamlined Process to transition to ISO 9001:2001. A memorandum dated 19 March 2001 signed by Mr. Oliver authorizes a streamlined process and consistent approach for DoD to simplify transition from the 1994 edition of ANSI/ISO/ASQ 9001, 9002 or 9003 to 9001:2000, Quality Management Systems – Requirements, version when elected by the contractor. When DCMA is the cognizant contract administration office, DCMA is authorized to monitor the transition and implementation and issue appropriate modifications. When DCMA is not the cognizant administration activity, the contracting officer will generate the modifications. Contract Mr. Ed Albin at DSN 692-2418 for more information.

AFFARS

AFACS (Available at <http://farsite.hill.af.mil/regst1.htm#AFAC>)

No new AFACs have been issued since AFAC 96-4, issued 13 Oct 00. Effective 20 Oct 00.

Contracting Policy Memos (Available at http://www.safaq.hq.af.mil/contracting/policy/das_pol.cfm)

Policy Memo 01-C-01 issued 3 May 2001 effective immediately states that determinations in accordance with the Berry Amendment may not be redelegated and any redelegations are rescinded. All such non-availability determinations shall for make by the Secretary of the Air Force. The Berry Amendment deals with procurement of fabric, specialty metals and fibers. For more information refer to the memo above.

Contracting Information Memos (Available at http://www.safaq.hq.af.mil/contracting/policy/das_info.shtml)

No new Contracting Information Memos have been issued since 15 Oct 99 on the website. However a letter dated 10 April 2001 should be posted soon. It is entitled, Attendance at Source Selection Meetings. The letter reminds the acquisition community that only those who are members of the source selection organization are permitted to attend meetings in which source selection sensitive material is discussed. Government personnel and support contractors who support work on a program on a day-to-day basis shall not attend unless they are designated as members of the source selection organization.

Contracting Related Memos (Available at <http://www.safaq.hq.af.mil/contracting/policy/conrelatedmemo.html>)

No new Contracting Related Memos have been issued since 4 Dec 00.

AFSPCFARS (Available at
<http://www.spacecom.af.mil/hqafspc/contracting/Policy/afspcfars1.htm>)

No changes to the AFSPC FAR Supplement since AFSPCAC 2000-01 dated Nov 00.

Information (Policy) Letters (Available at
http://www.spacecom.af.mil/hqafspc/contracting/Policy/Documents/policy_letters/policy_letters.htm)

No new letters issued since 2001-02 dated 8 March 2001

MISCELLANEOUS

More Checklists Added to AFSPC Homepage: The following new checklists will be available to provide additional tools to assist in developing and reviewing your contract actions: small business checklist, 8(a) checklist, modifications, source selection plan, technical evaluation and past performance. Go to the following site to check them out:
<http://www.spacecom.af.mil/hqafspc/contracting/>

Code of Federal Regulations Website: If you have a Code of Federal Regulation cite & want to know what it says, here's a link to the website. All you do is "fill in the blanks"
<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>

Commercial Applicability and Part 12 Usage: In light of the DoD's new metrics regarding percentages of new acquisition it is important to do a complete job of addressing why/why not an effort is commercial and Part 12 applicability during Acquisition Strategy Panels and in the content of Acquisition Plans.

Are you using ACRNs correctly? Just a reminder to follow DFARS 204.7 to make certain you develop contract schedules according to regulation. Aside from the requirement to follow DFARS, this will make certain that contracts can be loaded into SPS. This requirement includes using only one fund cite per clin or for subclins (if clin is informational in nature).

Reminder – 5 day waiting period for small business set-aside. Once offerors are notified of the apparent successful offeror in a small business set-aside acquisition (or when using HubZone procedures) in accordance with FAR 15.503(a)(2), contracting officers need to remember to permit a period of five days prior to awarding a contract so as to accommodate any size challenges as discussed in FAR 19.302(d)(1).

Section 808 Update No new information, but this Q and A forwarded by Mr. Beaman at the Pentagon may clarify some issues. We're still waiting for the delegation of waiver authority and specific procedures.

QUESTIONS AND ANSWERS ON CHANGES TO 10 U.S.C. § 1724 MADE BY
SECTION 808 OF THE FLOYD D. SPENCE NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 2001

Definition of “New Entrant”

It is the Department’s view that this requirement applies only to individuals entering DoD on or after October 1, 2000. Civilian personnel in DoD, who occupied GS-1102 positions or contracting officer positions with authority to award or administer contracts above the simplified acquisition threshold on or before September 30, 2000, are therefore excluded from this new requirement as it applies **to civilian positions**. Military personnel who occupied positions with occupational specialties similar to the GS-1102 series or contracting officer positions with authority to award or administer contracts above the simplified acquisition threshold on or before September 30, 2000, are therefore excluded from this new requirement as it applies **to military positions**.

Q. Does an employee who is currently holding a GS-301 position within DoD, but held a GS-1102 position within DoD in 1999, have to meet the new educational requirements of 10 U.S.C. § 1724?

A. No. This DoD civilian employee occupied a GS-1102 position within DoD on or before September 30, 2000; therefore, he/she is excluded from this new requirement with respect to a civilian GS-1102 position.

Q. Can a current DoD employee holding a GS-301 position be considered for a GS-1102 position within DoD, without ever having held a GS-1102 position within DoD and without meeting the new educational requirements of 10 U.S.C. § 1724?

A. This individual must meet the new educational requirements of 10 U.S.C. § 1724 in order to be qualified and considered for the position. While there is a waiver provision for current DoD employees, we anticipate that it will be used only in rare instances (i.e. hard to fill positions, shortage of highly qualified candidates, and similar situations). We recommend that Components establish and publish standard criteria and procedures for use of the waiver.

Q. Does a current retired and/or separated military member, who occupied a position with an occupational specialty similar to the GS-1102 series on or before September 30, 2000, have to meet the new educational requirements of 10 U.S.C. § 1724 when applying for a GS-1102 position within DoD?

A. Yes. With respect to applying for civilian positions within DoD, the retired or separated military member would be considered a “new entrant.”

Q. Does a current civilian employee occupying a GS-1102 position in any agency outside of DoD, who has never held a GS-1102 position within DoD, have to meet the new educational requirements of 10 U.S.C. § 1724?

A. Yes. With respect to applying for GS-1102 positions within DoD, the non-DoD employee is considered a “new entrant” and must meet the new educational requirements.

Use of Waivers

Components are required to use the 10 U.S.C. § 1724(d) waiver provision for new entrants who do not meet the requirements of 10 U.S.C. § 1724 and were hired into the 1102 series between October 1, 2000 and March 21, 2001, the date of the Acting Under Secretary of Defense (Personnel & Readiness)’s policy memorandum on the changes in the education requirements for the acquisition workforce, enacted by section 808 of the Floyd D Spence National Defense Authorization Act for Fiscal Year 2001.

Q. Where does the new entrant, hired on or after October 1, 2000, and who does not completely meet the new educational requirements of 10 U.S.C. § 1724, go for a waiver?

A. The law (10 U.S.C. § 1724(d)) authorizes each Military Department’s acquisition career program board to issue waivers. Each Military Department manages its waiver authority through its Director of Acquisition Career Management (DACM) office. For the Fourth Estate, the Director of Acquisition Education, Training, and Career Development, the Office of USDA(A), is the DACM. It is the responsibility of management, not the employee, to obtain the waiver needed to hire/promote/reassign/change to lower grade.

Q. Is a waiver required in order to place a PPP referral who does not meet the new educational requirements of 10 U.S.C. § 1724 or is not excluded from meeting these requirements as stated in the Acting Under Secretary of Defense (Personnel & Readiness)'s policy memorandum of March 21, 2001?

A. Yes. Before making a formal PPP offer, the appropriate Acquisition Career Program Board must approve a waiver. Waivers are processed under established DoD and Component procedures.

DoD Priority Placement Program (PPP)

Q. What affect do the new qualification requirements of 10 U.S.C. § 1724 have on employees registering in the DoD Priority Placement Program?

A. None. The Section 808 amendments to 10 U.S.C. § 1724 do not require any changes to the already existing procedures for PPP registration and placement. You can find these procedures in the **PPP Operations Manual, Chapter 3, Section G.6. and Chapter 4, Section D.3.c.**

Applicability of Section 808 to NAF Employees

Q. Do the education requirements of 10 U.S.C. § 1724 apply to 1102s who are non appropriated funded?

A. No. The Office of General Council has determined that the new 1102 educational requirements contained in Section 808 of the National Defense Authorization Act do not apply to NAF employees

Applicability of Section 808 to Temporary and Term Employees

Q. Do the requirements of 10 U.S.C. § 1724 apply to Temporary and Term employees?

A. Yes. However, if an employee was in an 1102 position prior to 1 Oct 00, he/she is excepted from the new provisions of Section 808. It does not matter if they were permanent or temporary. If, however you intend to either non-competitively convert from temporary to permanent, or re-compete the position to make it permanent, you must make sure you document that the employee met the exception provisions.

Training and APDP related Websites:

SAF/AQXD - The Source for AF APDP policy: www.safaq.hq.af.mil/acq_workf/

Air Force APDP WebGuide: http://www.safaq.hq.af.mil/acq_workf/career_training/apdp/

Re-Identified Acquisition Workforce:

http://www.safaq.hq.af.mil/acq_workf/workforce_issues/atwi.html

SAF/AQXD-ATO, Air Force Acquisition Training Office (AFATO):

www.safaq.hq.af.mil/acq_workf/training/

ACMS: <https://acms.afpc.randolph.af.mil/>

AFATO Funding Procedures for DAU Training:

http://www.safaq.hq.af.mil/acq_workf/training/financial/index.htm

Data-on-Demand - AF metrics, vacancies in DAU classes, etc: www.afato.af.pentagon.mil

ACQ Now: Will be linked from AFATO page

HQ AFMC APDP: <https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/DP/dpe/dpeo/apdphp.htm>

Developing Aerospace Leaders (DAL): www.dal.af.mil

DAU: www.dau.mil

DAU Catalogue: <http://www.dau.mil/catalog/catalog.htm>

Acquisition Workforce 2005: <http://www.acq.osd.mil/yourfuture/>

MILMOD: www.afpc.randolph.af.mil/modern/

CIVMOD: <http://www.afpc.randolph.af.mil/dpc/MDCPDS/mdcpds.htm>

AFPC Civilian Career Programs: www.afpc.randolph.af.mil/cp/

Acquisition Officer Assignments: <http://afas.afpc.randolph.af.mil>

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