



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2018-0001, Sequence No. 2]

**Federal Acquisition Regulation: Federal Acquisition Circular
2005-98; Introduction**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005-98. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005-98 and the specific FAR case number. For information pertaining to status or publication

schedules, contact the Regulatory Secretariat Division at 202-501-4755.

Rules Listed in FAC 2005-98

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
I	Task- and Delivery-Order Protests	2017-007	Gray
II	Duties of Office of Small and Disadvantaged Business Utilization	2017-008	Fry
III	Liquidated Damages Rate Adjustment	2017-004	Delgado
IV	Audit of Settlement Proposals	2015-039	Delgado

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-98 amends the FAR as follows:

Item I—Task- and Delivery-Order Protests (FAR Case 2017-007)

This final rule amends the FAR to implement section 835 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328). Section 835 amends 10 U.S.C. 2304c(e)(1)(B) to raise the threshold for task- and delivery-order protests from \$10 million to \$25 million (applicable to DoD, NASA, and the Coast Guard). The section also amends 41 U.S.C. 4106(f) to repeal the sunset date, which was also previously repealed by the GAO Civilian Task and Delivery Order Protest Authority Act of 2016 (Pub. L.

114-260). There will be an unquantifiable impact on offerors (including small businesses) that lose the right to protest awards of task or delivery orders valued between \$10 million and \$25 million, but the impact is expected to be de minimis, because there are very few protests of procurements in that dollar range.

Item II—Duties of Office of Small and Disadvantaged Business Utilization (FAR Case 2017-008)

This final rule amends the FAR to reflect additional duties for agencies' Office of Small and Disadvantaged Business Utilization, or for DoD's Office of Small Business Programs, which were added to section 15(k) of the Small Business Act by the NDAA for FY 2017. This rule only provides information regarding the internal operating procedures of the Government.

Item III—Liquidated Damages Rate Adjustment (FAR Case 2017-004)

This final rule amends the FAR to adjust for inflation the rate of liquidated damages assessed or enforced by Department of Labor (DOL) regulations for violations of the overtime provisions of the Contract Work Hours and Safety Standards Act. The FAR rule implements DOL's interim final rule published in the Federal Register at 81 FR 43430 on July 1, 2016, DOL's final rule published in the Federal Register at 82 FR 5373 on January 18, 2017, and subsequent

adjustments for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of Pub. L. 114-74) (28 U.S.C. 2461 Note). There is no significant impact on small entities imposed by the FAR rule.

Item IV—Audit of Settlement Proposals (FAR Case 2015-039)

This final rule amends the FAR to raise the dollar threshold requirement for the audit of prime contract settlement proposals and subcontract settlements from \$100,000 to \$750,000 to align with the threshold in FAR 15.403-4(a)(1) for obtaining certified cost or pricing data.

The requirements in the rule will not have a significant economic impact on a substantial number of small entities. Since the rule raises the audit threshold, even fewer small businesses will be subject to audits of their termination settlement proposals resulting in a reduction of time spent to complete termination settlements.

Dated: April 25, 2018.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005-98 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-98 is effective [***insert date of publication in the Federal Register***] except for items I, II, III, and IV, which are effective [***insert date 30 days after date of publication in the Federal Register***].

Dated: April 24, 2018.

Shay D. Assad,
Director, Defense Pricing/Defense
Procurement and Acquisition Policy.

Dated: April 23, 2018.

Jeffrey A. Koses,
Senior Procurement Executive/Deputy CAO,
Office of Acquisition Policy,
U.S. General Services Administration.

Dated: April 24, 2018.

Monica Y. Manning,
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