

**The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) published a number of interim and final rules in Federal Acquisition Circular (FAC) 2005-42**

*June 16, 2010*

**Electronic Subcontracting Reporting System (eSRS).**

Electronic Subcontracting Reporting System (eSRS)(FAR Case 2005-040) This rule amends the Federal Acquisition Regulation (FAR) to **adopt as final**, with changes, an interim FAR rule published in the Federal Register at 73 FR 21779 on April 22, 2008, amending the FAR to implement the use of the Electronic Subcontracting Reporting System (eSRS) to fulfill small business subcontracting reporting requirements. The eSRS, a web-based system, replaces the Standard Forms 294 and 295 as the mechanism for submitting reports required by the small business subcontracting program. In addition, this rule adds a new Alternate III to FAR clause 52.219-9 to recognize that there is a circumstance under which contractors will need to use SF 294, rather than eSRS, to submit an Individual Subcontract Report. The contractor will use SF 294 if a contract is not reported in the Federal Procurement Data System because reporting it in that system may disclose information that would compromise national security.

**American Recovery and Reinvestment Act of 2009 (Recovery Act)--GAO/IG Access.**

American Recovery and Reinvestment Act of 2009 (Recovery Act)--GAO/IG Access (FAR Case 2009-011)

This **final rule adopts**, with changes, the interim rule published in the Federal Register at 74 FR 14646 on March 31, 2009. This final rule amends the FAR to implement sections 902, 1514, and 1515 of the American Recovery and Reinvestment Act of 2009 (Recovery Act). Collectively, these sections provide for the audit and review of both contracts and subcontracts, and the ability to interview such contractor and subcontractor personnel under contracts containing Recovery Act funds. These Recovery Act provisions are implemented in new alternate clauses to FAR 52.212-5 "Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items" and FAR 52.214-26 "Audit and Records--Sealed Bidding," and by amending FAR 52.215-2 "Audit and Records--Negotiation." For the Comptroller General, these alternate clauses provide specific authority to audit contracts and subcontracts and to interview contractor and subcontractor employees under contracts using Recovery Act funds. Agency Inspector Generals receive the same authorities, with the exception of interviewing subcontractor employees. The changes to the interim rule clarify its application to supplemental agreements, and orders under task- or delivery-order contracts, involving Recovery Act funds.

**New Designated Country--Taiwan.**

New Designated Country--Taiwan (FAR Case 2009-014) This **final rule adopts as final**, without change, an interim rule implementing the designation of Taiwan under the World Trade Organization Agreement on Government Procurement, which took effect on July 15, 2009. This FAR change allows contracting officers to purchase goods and services made in Taiwan without

application of the Buy American Act if the acquisition is covered by the World Trade Organization Agreement on Government Procurement.

### **Payrolls and Basic Records (Interim).**

Payrolls and Basic Records (FAR Case 2009-018) (Interim) This **interim rule** implements changes that the Department of Labor (DOL) instituted regarding the submission of payroll data in their final rule, Protecting the Privacy of Workers: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, published in the Federal Register at 73 FR 77504 on December 19, 2008. The rule revises FAR 52.222-8, Payrolls and Basic Records, to delete the requirement for submission of full social security numbers and home addresses of individual workers, prime contractor, on weekly payroll transmittals as required on covered construction contracts. The rule requires contractors and subcontractors to maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting officer, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. The rule recognizes DOL's finding that complete social security numbers and home addresses for individual workers is personal information to the worker and that any unnecessary disclosure and submittal of such information creates an exposure to identity theft and the invasion of privacy for workers.

### **Nonavailable Articles.**

Nonavailable Articles (FAR Case 2009-013) This **final rule** amends FAR 25.104(a) to add certain items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality. This case is based on extensive market research by the Defense Logistics Agency. Unless the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality, the Buy American Act does not apply to acquisition of these items as end products, and the contracting officer may treat foreign components of the same class or kind as domestic components.