

**FAC 2005-32 / FAR Case 2009-011: American Recovery and Reinvestment Act of 2009 (the Recovery Act) – GAO / IG Access; OCPO Regulatory Advisory 09-20**

<b>FAC 2005-32 / FAR Case 2009-011 Issued</b>	March 31, 2009
<b>FAC 2005-32 / FAR Case 2009-011 Effective</b>	March 31, 2009

**FEDERAL REGISTER / Vol 74, No. 60 (Pages 14646-14649), March 31, 2009 / Rules and Regulations Item V – American Recovery and Reinvestment Act of 2009 (the Recovery Act) –GAO / IG Access (Interim) (FAR Case 2009-011)** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 902, 1514, and 1515 of the American Recovery Reinvestment Act Of 2009. 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.

**Purpose & Description: FAR Case 2009-011, Interim Rule**

- Implements sections 902, 1514, and 1515 of the Recovery Act.
- Adds alternate clauses to FAR 52-214-26 “Audit and Records – Sealed Bidding,” and 52.212-5 “Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items,” and further, adds an alternate clause to FAR 52.215-2 “Audits 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.

**FAR Parts Affected:** Parts 12, 13, 14, 15, and 52

**Applicability**

- This interim rule applies to solicitations issued and contracts awarded which include Recovery Act funds, on or after the effective date of this rule.
- Per amendment to FAR 12.504(a)(7), subcontracts that would otherwise be exempt from examination of records where cost or pricing data are not required, are subject to this rule.
- This rule applies to commercial and commercially available off-the-shelf contracts, and to contracts both above and below the simplified acquisition threshold.

**Contractor Requirements**

- Contractors and subcontractors are not obligated to create additional records under this interim rule.
- Contractors and subcontractors must make available existing records of transactions covered by the Recovery Act and make employees available for interviews.
- To receive Recovery Act-funded orders under existing ordering contracts and agreements, or Recovery Act-funded line items under existing contracts, contractors must agree to bilateral modifications of such contractual vehicles to add the appropriate alternate clause(s).

**Contracting Officer Responsibilities**

- For all solicitations and contract awards using or potentially using Recovery Act funds, Contracting Officers must include the appropriate alternate clause(s).

- Contracting Officers must bilaterally modify all existing ordering contracts (including Indefinite Delivery/Indefinite Quantity contracts) and all agreements (including Blanket Purchase Agreements) to include the appropriate alternate clause(s) when Recovery Act funds are planned to be used for subsequent orders..
- For any existing contract being modified to add Recovery Act funded line item(s), Contracting Officers must bilaterally modify the contracts to include the appropriate alternate clause(s).

### Key Concepts

- This rule provides the Comptroller General<sup>1</sup> the authority to:
  - Part 12 Contracts – Audit subcontracts and interview contractor and subcontractor personnel;
  - Part 15 Contracts – Interview contractor and subcontractor personnel; and
  - Part 14 Contracts – Audit both contracts and subcontracts and interview contractor and subcontractor personnel.
- This rule provides the agency Inspector General the authority to:
  - Part 12 Contracts – Audit subcontracts and interview contractor personnel;
  - Part 15 Contracts – Interview contractor personnel; and
  - Part 14 Contracts – Audit both contracts and subcontracts and interview contractor personnel.

### Impact on DHS Acquisition Policy

No changes to the HSAR or HSAM are anticipated.

### For More Information

- To access FAC 2005-32's interim rule on GAO/IG Access, type **FAC 2005-32** in the "Search Documents" section of Regulations.Gov at <http://www.regulations.gov/search/index.jsp>
- For questions on FAR Case 2009-011, contact Joe Giuliani at (202) 447-5486 or [joseph.giuliani@dhs.gov](mailto:joseph.giuliani@dhs.gov).

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<sup>1</sup> Field audits and interviews are typically conducted by GAO auditors.