

**Federal Acquisition Regulation**

# **FAC Summaries**

**Through 2005-53**

Prepared by  
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## Index

<b>July 5, 2011</b>	<b>Number 2005-53</b>	<b>10</b>
Item I—Equal Opportunity for Veterans (FAR Case 2009-007) .....		10
Item II—Unique Procurement Instrument Identifier (FAR Case 2009-023) .....		10
Item III—Uniform Suspension and Debarment Requirement (FAR Case 2009-036) .....		10
Item IV—Extension of Sunset Date for Protests of Task and Delivery Orders (FAR Case 2011-015) (Interim) .....		10
Item V—Encouraging Contractor Policies to Ban Text Messaging While Driving (FAR Case 2009-028) .....		11
Item VI—TINA Interest Calculations (FAR Case 2009-034) .....		11
<b>May 31, 2011</b>	<b>Number 2005-52</b>	<b>11</b>
Item I—Women-Owned Small Business (WOSB) Program (Interim) (FAR Case 2010-015) .....		11
Item I—Sustainable Acquisition (FAR Case 2010-001) (Interim) .....		11
Item II—Contract Closeout (FAR Case 2008-020) .....		11
Item III—Prohibition on Contracting with Inverted Domestic Corporations (FAR Case 2008-009) .....		12
Item IV—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009-039) .....		12
Item V—Oversight of Contractor Ethics Programs (FAR Case 2010-017) .....		12
Item VI—Technical Amendments .....		12
<b>April 1, 2011</b>	<b>Number 2005-51</b>	<b>12</b>
Item I—Women-Owned Small Business (WOSB) Program (Interim) (FAR Case 2010-015) .....		12
Item II—Clarification of Standard Form 26—Award/Contract (FAR Case 2009-029) .....		13
<b>March 16, 2011</b>	<b>Number 2005-50</b>	<b>13</b>
Item I—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008-030) (Interim) .....		13
Item II—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007-012) (Interim) .....		13
Item III—Justification and Approval of Sole-Source 8(a) Contracts (2009-038) (Interim) .....		14
Item IV—Additional Requirements for Market Research (FAR Case 2008-007) .....		14
Item V—Socioeconomic Program Parity (FAR Case 2011-004) (Interim) .....		14
Item VI—Use of Commercial Services Item Authority (FAR Case 2008-034) .....		14
Item VII—Trade Agreements Thresholds (FAR Case 2009-040) .....		15
Item VIII—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009-025) .....		15
Item IX—Compensation for Personal Services (FAR Case 2009-026) .....		15
Item X—Technical Amendments .....		15
<b>January 24, 2011</b>	<b>Number 2005-49</b>	<b>16</b>
Public Access to the Federal Awardee Performance and Integrity Information System (FAR Case 2010-016) (Interim) .....		16
<b>December 30, 2010</b>	<b>Number 2005-48</b>	<b>16</b>
Item I—Repeal of the Small Business Competitiveness Demonstration Program (FAR Case 2011-005) .....		16
Item II—Personal Identity Verification of Contractor Personnel (FAR Case 2009-027) .....		16
Item III—Terminating Contracts (FAR Case 2009-031) .....		16
Item IV—Payrolls and Basic Records (FAR Case 2009-018) .....		17
<b>December 13, 2010</b>	<b>Number 2005-47</b>	<b>17</b>
Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR case 2010-006) (Interim) .....		17
Item II—HUBZone Program Revisions (FAR Case 2006-005) .....		18
Item III—Preventing Abuse of Interagency Contracts (FAR Case 2008-032) (Interim) .....		18
Item IV—Small Disadvantaged Business Program Self-Certification of Subcontractors (FAR Case 2009- 019) (Interim) .....		19

Item V—Uniform Suspension and Debarment Requirement (FAR Case 2009-036) (Interim).....	19
Item VI—Limitations on Pass-Through Charges (FAR Case 2008-031) This final rule adopts the interim rule published in the Federal Register at 74 FR 52853, October 14, 2009, as a final rule with minor changes. ....	19
Item VII—Technical Amendments.....	19
<b>September 29, 2010</b>	<b>Number 2005-46.1</b>
Looseleaf pages .....	20
<b>September 29, 2010</b>	<b>Number 2005-46</b>
Item I—Equal Opportunity for Veterans (FAR Case 2009-007) (Interim).....	20
Item II—Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (FAR Case 2010-012) (Interim) .....	20
Item III—Termination for Default Reporting (FAR Case 2008-016).....	20
Item IV—Award-Fee Language Revision (FAR Case 2008-008).....	21
Item V—Offering a Construction Requirement—8(a) Program (FAR Case 2009-020) .....	21
Item VI—Encouraging Contractor Policies to Ban Text Messaging While Driving (FAR Case 2009-028) (Interim).....	21
Item VII—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009-039) (Interim) .....	22
<b>August 30, 2010</b>	<b>Number 2005-45</b>
Item I, Inflation Adjustment of Acquisition-Related Thresholds .....	22
Item II, Definition of Cost or Pricing Data .....	23
Item III, American Recovery and Reinvestment Act of 2009 - Buy American Requirements for Construction Material.....	23
<b>July 23, 2010</b>	<b>Number 2005-43 Correction</b>
Item III—Recovery Act Subcontract Reporting Procedures (FAR Case 2010-008, Correction) (Interim) .....	23
<b>July 8, 2010</b>	<b>Number 2005-44</b>
Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008-039) (Interim).....	24
<b>July 2, 2010</b>	<b>Number 2005-43</b>
Item I—Government Property (FAR Case 2008-011).....	24
Item II—Registry of Disaster Response Contractors (FAR Case 2008-035).....	25
Item III—Recovery Act Subcontract Reporting Procedures (FAR Case 2010-008) (Interim) .....	25
Item IV—Clarification of Criteria for Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns (FAR Case 2008-023).....	25
Item V—Trade Agreements Thresholds (FAR Case 2009-040) (Interim) .....	25
<b>July 16, 2010</b>	<b>Number 2005-42 - 30 days (Revised pages)</b>
<b>June 16, 2010</b>	<b>Number 2005-42</b>
Item I—American Recovery and Reinvestment Act (the Recovery Act) of 2009—Whistleblower Protections (FAR Case 2009-012).....	26
Item II—Electronic Subcontracting Reporting System (eSRS) (FAR Case 2005-040).....	26
Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (FAR Case 2009-010) .....	26
Item IV—Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (FAR Case 2008-003).....	27
Item V—Additional Requirements for Market Research (FAR Case 2008-007) (Interim).....	28
Item VI—American Recovery and Reinvestment Act of 2009 (Recovery Act)—GAO/IG Access (FAR Case 2009-011).....	28
Item VII—New Designated Country—Taiwan (FAR Case 2009-014).....	28
Item VIII—Nonavailable Articles (FAR Case 2009-013) .....	29

Item IX—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009-025) (Interim).....	29	
Item X—Compensation for Personal Services (FAR Case 2009-026) (Interim).....	29	
Item XI—Payrolls and Basic Records (FAR Case 2009-018) (Interim).....	29	
Item XII—Technical Amendments.....	30	
<b>April 13, 2010</b>	<b>Number 2005-41</b>	<b>30</b>
Use of Project Labor Agreements for Federal Construction Projects (FAR Case 2009-005).....	30	
<b>March 23, 2010</b>	<b>Number 2005-40</b>	<b>30</b>
Federal Awardee Performance and Integrity Information System(FAR Case 2008-027) .....	30	
<b>March 19, 2010</b>	<b>Number 2005-39</b>	<b>31</b>
Item I—Extend Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2009-035).....	31	
Item II—Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (FAR Case 2008-012) .....	31	
Item III—Use of Standard Form 26 – Award/Contract(FAR Case 2008-040).....	32	
Item IV—Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (FAR Case 2008-006) .....	32	
Item V—Trade Agreements—Costa Rica, Oman, and Peru(FAR Case 2008-036) .....	32	
Item VI—Payments Under Fixed-Price Architecture and Engineering Contracts (FAR Case 2008-015) .....	33	
Item VII—Technical Amendment .....	33	
<b>December 10, 2009</b>	<b>Number 2005-38 (Correction)</b>	<b>33</b>
<b>December 10, 2009</b>	<b>Number 2005-38</b>	<b>33</b>
Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009-017) .....	33	
Item II—Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006-026).....	34	
Item III—Internet Protocol Version 6 (IPv6) (FAR Case 2005-041) .....	34	
Item IV—Federal Food Donation Act of 2008 (Pub. L. 110-247) (FAR Case 2008-017) .....	34	
Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006-021).....	35	
Item VI—Travel Costs (FAR Case 2006-024) .....	35	
Item VIII—Technical Amendments .....	35	
Looseleaf Only Corrections .....	35	
<b>October 14, 2009</b>	<b>Number 2005-37</b>	<b>35</b>
Item I—Registry of Disaster Response Contractors(FAR Case 2008-035) (Interim).....	35	
Item II—Limiting Length of Noncompetitive Contracts in “Unusual and Compelling Urgency” Circumstances (FAR Case 2007-008) .....	36	
Item III—GAO Access to Contractor Employees (FAR Case 2008-026) .....	36	
Item IV—Use of Commercial Services Item Authority(FAR Case 2008-034) (Interim rule).....	36	
Item V—Limitations on Pass-Through Charges (FAR Case 2008-031)(Interim) .....	37	
Item VI—Award Fee Language Revision (FAR Case 2008-008) (Interim).....	37	
Item VII—National Response Framework (FAR Case 2009-003).....	37	
Item VIII—Technical Amendments .....	38	
Looseleaf Only Corrections .....	38	
<b>August 11, 2009</b>	<b>Number 2005-36</b>	<b>38</b>
Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2008-038).....	38	
Item II—Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses (FAR Case 2007-021).....	38	
Item III—New Designated Country—Taiwan (FAR Case 2009-014) (Interim) .....	39	
Item IV—Prohibition on Restricted Business Operations in Sudan and Imports from Burma (FAR Case 2008-004).....	39	

Item V—List of Approved Attorneys, Abstractors, and Title Companies (FAR Case 2006-013) .....	39
Item VI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses(FAR Case 2007-002) .....	39
Item VII—Technical Amendments.....	40
Looseleaf Only Corrections .....	40
<b>July 14, 2009</b>	<b>Number 2005-35</b>
Revocation of Executive Order 13202 (FAR Case 2009-015) .....	40
<b>July 1, 2009</b>	<b>Number 2005-34</b>
Item I—Contractor Performance Information (FAR Case 2006-022) .....	40
Item II—Prohibition on Contracting with Inverted Domestic Corporations (FAR Case 2008-009) (Interim) .....	41
Item III—Role of Interagency Committee on Debarment and Suspension (FAR Case 2008-028) .....	41
<b>June 15, 2009</b>	<b>Number 2005-33</b>
Item I—Trade Agreements—Costa Rica, Oman, and Peru(FAR Case 2008-036) (Interim).....	41
Item II—Contractor’s Request for Progress Payments(FAR Case 2005-032).....	41
Looseleaf Only Corrections .....	42
<b>May 14, 2009</b>	<b>Number 2005-32, Technical Amendments</b>
<b>42</b>	
<b>March 31, 2009</b>	<b>Number 2005-32</b>
<b>42</b>	
Item I—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim) (FAR Case 2009-008).....	42
Item II—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim) (FAR Case 2009-012).....	42
Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (Interim) (FAR Case 2009-010) .....	43
Item IV—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements (Interim) (FAR Case 2009-009).....	43
Item V—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—GAO/IG Access (Interim) (FAR Case 2009-011).....	43
Item VI—GAO Access to Contractor Employees (Interim)(FAR Case 2008-026).....	44
<b>March 19, 2009</b>	<b>Number 2005-31 (Looseleaf correction)</b>
<b>44</b>	
<b>March 19, 2009</b>	<b>Number 2005-31</b>
<b>44</b>	
Item I—Small Business Size Rerepresentation (FAR Case 2006-032) .....	44
Item II—Clarification of Submission of Costs or Pricing Data on Non-Commercial Modifications of Commercial Items (FAR Case 2008-012) (Interim) .....	45
Item III—Amendments to Incorporate New Wage Determinations (FAR Case 2008-014).....	45
Item IV—Least Developed Countries that are Designated Countries(FAR Case 2008-021) .....	45
Item V—Federal Food Donation Act of 2008 (Pub. L. 110-247) (FAR Case 2008-017) (Interim) .....	46
Item VI—Technical Amendments .....	46
Looseleaf Only Corrections .....	46
<b>January 15, 2009</b>	<b>Number 2005-30 (Looseleaf correction)</b>
<b>46</b>	
<b>January 15, 2009</b>	<b>Number 2005-30</b>
<b>46</b>	
Item I—Federal Procurement Data System (FPDS)(FAR Case 2004-038).....	46
Item II—Commercially Available Off-the-Shelf (COTS) Items(FAR Case 2000-305).....	47
Item III—Exemption of Certain Service Contracts from the Service Contract Act (SCA). (FAR Case 2001- 004).....	47
Item IV— Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts-Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (Interim) (FAR Case 2008-003) ...	47
Item V—SAFETY Act: Implementation of DHS Regulations(FAR Case 2006-023).....	48
Item VI—Electronic Products Environmental Assessment Tool (EPEAT) (FAR Case 2006-030) .....	48
Item VII—Combating Trafficking in Persons (FAR Case 2005-012).....	49

Item VIII—Trade Agreements—New Thresholds (FAR Case 2007-016) .....	49
Item IX—Technical Amendment .....	49
Looseleaf Only Corrections .....	49
<b>January 14, 2009</b>	<b>Number 2005-29, Amendment-1</b>
Employment Eligibility Verification (FAR Case 2007-013) .....	50
<b>November 14, 2008</b>	<b>Number 2005-29</b>
Employment Eligibility Verification (FAR Case 2007-013) .....	50
<b>November 12, 2008</b>	<b>Number 2005-28</b>
Item I—Contractor Business Ethics Compliance Program and Disclosure Requirements (FAR Case 2007-006).....	51
<b>September 17, 2008</b>	<b>Number 2005-27</b>
Item I—Correcting Statutory References Related to the Higher Education Act of 1965 (FAR Case 2007-020) ...	51
Item II—Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD (FAR Case 2008-001).....	52
Item III—Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name (FAR Case 2007-015).....	52
Item IV—Local Community Recovery Act of 2006(FAR Case 2006-014) .....	52
Item V—Additional Requirements for Competition Advocate Annual Reports (FAR Case 2007-007) .....	52
Item VI—Contract Debts (FAR Case 2005-018).....	52
Item VII—Subcontractor Requests for Bonds (FAR Case 2007-022).....	53
Item VIII—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items(FAR Case 2008-002) .....	53
Item IX—Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (FAR Case 2008-006) (Interim) .....	53
Item X—Online Representations and Certifications Application Review (FAR Case 2006-025) .....	54
Item XI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses(FAR Case 2007-002) (Interim) .....	54
Item XII—CAS Administration (FAR Case 2006-004) .....	54
Item XIII—Accepting and Dispensing of \$1 Coin(FAR Case 2006-027).....	54
Item XIV—Technical Amendments .....	54
<b>June 12, 2008</b>	<b>Number 2005-26</b>
Item I—Prohibition on Restricted Business Operations in Sudan and Imports from Burma (FAR Case 2008-004) (Interim).....	55
<b>April 22, 2008</b>	<b>Number 2005-25</b>
Item I—Federal Procurement Data System Reporting(FAR Case 2004-038) (Interim).....	55
Item II—Electronic Subcontracting Reporting System (eSRS)(FAR Case 2005-040) (Interim) .....	55
Item III—Revisions to the Defense Priorities and Allocations System (DPAS) (FAR Case 2006-033) .....	56
Item IV—Use of Products Containing Recovered Materials in Service and Construction Contracts (FAR Case 2005-039) .....	56
Item V—Representations and Certifications - Tax Delinquencies(FAR Case 2006-011) .....	56
Item VI—Enhanced Access for Small Business (FAR Case 2006-031).....	56
Item VII—Technical Amendment .....	57
<b>February 28, 2008</b>	<b>Number 2005-24</b>
Item II—Numbered Notes for Synopses (FAR Case 2006-016) .....	57
Item III—Trade Agreements – New Thresholds (FAR Case 2007-016)(Interim).....	57
Item IV—New Designated Countries—Dominican Republic, Bulgaria, and Romania (FAR Case 2006-028) .....	57
Item V—FAR Part 30—CAS Administration (FAR Case 2005-027) .....	58
Item VI—Common Security Configurations (FAR Case 2007-004).....	58

<b>December 26, 2007</b>	<b>Number 2005-23</b>	<b>58</b>
Item I—Electronic Products Environmental Assessment Tool (EPEAT) (FAR Case 2006-030) (Interim) .....		58
Item II—Contracts with Religious Entities (FAR Case 2006-019) .....		58
Item III—Performance-Based Payments (FAR Case 2005-016) .....		59
Looseleaf Only Corrections .....		59
<b>November 23, 2007</b>	<b>Number 2005-22</b>	<b>59</b>
Item I—Implementation of Section 104 of the Energy Policy Act of 2005 (FAR Case 2006-008) .....		59
Item II—Contractor Code of Business Ethics and Conduct (FAR Case 2006-007) .....		59
<b>November 7, 2007</b>	<b>Number 2005-21</b>	<b>60</b>
Item I—SAFETY Act: Implementation of DHS Regulations (FAR Case 2006-023) (Interim) .....		60
Item II—Biobased Products Preference Program (FAR Case 2004-032) .....		60
Item III—FAR Part 27 Rewrite in Plain Language (FAR Case 1999-402) .....		61
Item IV—Federal Computer Network (FACNET) Architecture (FAR Case 2006-015) .....		61
Item V—Exemption of Certain Service Contracts from the Service Contract Act (SCA) (FAR Case 2001-004) (Interim) .....		61
Item VI—Local Community Recovery Act of 2006 (FAR Case 2006-014) (Interim) .....		61
Item VII—Labor Standards for Contracts Containing Construction Requirements-Contract Pricing Method References (FAR Case 2007-001) .....		62
Item VIII—Technical Amendments .....		62
<b>September 6, 2007</b>	<b>Number 2005-20</b>	<b>62</b>
Federal Funding Accountability and Transparency Act (FFATA)—Reporting Requirement of Subcontractor Award Data (FAR Case 2006-029) .....		62
<b>August 17, 2007</b>	<b>Number 2005-19</b>	<b>63</b>
Item I—Reporting of Purchases from Overseas Sources (FAR Case 2005-034) .....		63
Item II—Changes to Lobbying Restrictions (FAR Case 2005-035) .....		63
Item III—Online Representations and Certifications Application Archiving Capability (FAR Case 2005-025) .....		64
Item IV—Requirement to Purchase Approved Authentication Products and Services (FAR Case 2005-017) .....		64
Item V—Combating Trafficking in Persons (FAR Case 2005-012) (Interim) .....		64
Item VI—Emergency Acquisitions (FAR Case 2005-038) .....		65
Item VII—Small Business Credit for Alaska Native Corporations and Indian Tribes (FAR Case 2004-017) .....		65
Item VIII—New Designated Countries—Bulgaria, Dominican Republic, and Romania (FAR Case 2006-028) (Interim) .....		65
Item IX—Online Representations and Certifications Application (ORCA) Review (FAR Case 2006-025) (Interim) .....		65
Item X—Free Trade Agreements—El Salvador, Honduras, and Nicaragua (FAR Case 2006-006) .....		66
Item XI—Free Trade Agreements—Bahrain and Guatemala (FAR Case 2006-017) .....		66
Item XII—Accepting and Dispensing of \$1 Coin (FAR Case 2006-027) (Interim) .....		66
Item XIII—Technical Amendments .....		66
<b>July 5, 2007</b>	<b>Number 2005-18</b>	<b>67</b>
Small Business Size Rerepresentation (FAR Case 2006-032) .....		67
<b>May 15, 2007</b>	<b>Number 2005-17</b>	<b>67</b>
Government Property (FAR Case 2004-025) .....		67
<b>March 22, 2007</b>	<b>Number 2005-16</b>	<b>67</b>
Item I—Implementation of Wage Determinations On Line (WDOL) (FAR Case 2005-033) .....		68
Item II—Termination or Cancellation of Purchase Orders (FAR Case 2005-029) .....		68
Item III—Contracts with Religious Entities (Interim) (FAR Case 2006-019) .....		68
Item IV—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2006-012) .....		68

<b>February 13, 2007</b>	<b>Number 2005-15 Addendum</b>	<b>68</b>
Technical Amendments .....		69
<b>December 12, 2006</b>	<b>Number 2005-15 (Correction)</b>	<b>69</b>
<b>December 12, 2006</b>	<b>Number 2005-15</b>	<b>69</b>
Item I—Payments Under Time-and-Materials and Labor-Hour Contracts (FAR Case 2004-015) .....		69
Item II—Additional Commercial Contract Types (FAR Case 2003-027) .....		69
<b>November 22, 2006</b>	<b>Number 2005-14</b>	<b>69</b>
Item I—Common Identification Standard for Contractors (FAR Case 2005-015) .....		69
Item II—Removal of Sanctions Against Certain EU Countries(FAR Case 2005-045) .....		70
Item III—Free Trade Agreements—Bahrain and Guatemala (Interim)(FAR Case 2006-017) .....		70
Item IV—Free Trade Agreements—Morocco (FAR Case 2006-001).....		70
Item V—Technical Amendments .....		71
<b>September 28, 2006</b>	<b>Number 2005-13</b>	<b>71</b>
Item I—Implement OMB Policy on the Use of Brand Name Specifications (Interim) (FAR Case 2005-037).....		71
Item II—Information Technology Security (FAR Case 2004-018).....		71
Item III—Online Representations and Certifications Application(ORCA) Archiving Capability (Interim) (FAR Case 2005-025).....		71
Item IV—Inflation Adjustment of Acquisition-Related Thresholds(FAR Case 2004-033) .....		72
Item V—Trade Agreements—Thresholds (FAR Case 2005-030).....		72
Item VI—Reporting of Purchases from Overseas Sources (Interim)(FAR Case 2005-034) .....		72
Item VII—Exception to the Buy American Act for Commercial Information Technology (FAR Case 2005- 022).....		73
Item VIII—Technical Amendments .....		73
Looseleaf Only Corrections .....		73
<b>August 4, 2006</b>	<b>Number 2005-12</b>	<b>73</b>
Local Community Recovery Act of 2006 (Interim)(FAR Case 2006-014) .....		74
<b>July 5, 2006</b>	<b>Number 2005-11</b>	<b>74</b>
Item I—Earned Value Management System (EVMS)(FAR Case 2004-019).....		74
Item II—Emergency Acquisitions (FAR Case 2005-038).....		74
<b>June 28, 2006</b>	<b>Number 2005-10</b>	<b>74</b>
Item I—Central Contractor Registration—Taxpayer Identification Number (TIN) Validation (FAR Case 2005-007).....		74
Item II—Procedures Related to Procurement Center Representatives (FAR Case 2006-003) .....		75
Item III—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004-035).....		75
Item IV—Implementation of Wage Determinations On Line (WDOL)(Interim) (FAR Case 2005-033) .....		75
Item V—Free Trade Agreements – El Salvador, Honduras, and Nicaragua (Interim) (FAR Case 2006-006).....		76
Item VI—Buy-Back of Assets (FAR Case 2004-014).....		76
Item VII—Technical Amendments.....		76
Looseleaf Only Corrections .....		76
<b>April 19, 2006</b>	<b>Number 2005-09</b>	<b>76</b>
Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2004-007).....		77
Item II—Definition of Information Technology (FAR Case 2004-030) .....		77
Item III—OMB Circular A-76 (FAR Case 2004-021) .....		77
Item IV—Combating Trafficking in Persons (FAR Case 2005-012)(Interim) .....		77
Item V—Confirmation of HUBZone Certification (FAR Case 2005-009) .....		77
Item VI—Expiration of the Price Evaluation Adjustment(FAR Case 2005-002).....		78
Item VII—Removal of Sanctions Against Certain European Union Member States (FAR Case 2005-045) (Interim).....		78

Item VIII—Free Trade Agreements - Morocco (FAR Case 2006-001)(Interim) .....	78
Item IX—Fast Payment Procedures (FAR Case 2004-031) .....	78
X—Technical Amendment .....	78
<b>January 5, 2006</b>	<b>Number 2005-08</b>
Trade Agreements—Thresholds (Interim) (FAR Case 2005-030) .....	79
<b>January 3, 2006</b>	<b>Number 2005-07</b>
Item I—Transportation: Standard Industry Practices(FAR Case 2002-005) .....	79
Item II—Common Identification Standard for Contractors (FAR Case 2005-015) (Interim) .....	80
Item III—Change to Performance-Based Acquisition (FAR Case 2003-018).....	80
Item IV—Free Trade Agreements—Australia and Morocco (FAR Case 2004-027) .....	80
Item V—Deletion of the Very Small Business Program (FAR Case 2005-013) .....	80
Item VI—Purchases From Federal Prison Industries—Requirement for Market Research (FAR Case 2003-023).....	81
Item VII—Exception from Buy American Act for Commercial Information Technology (Interim) (FAR Case 2005-022).....	81
Item VIII—Removal of Sanctions Against Libya (FAR Case 2005-026) .....	81
Item IX—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003-024).....	82
Item X—Annual Representations and Certifications—NAICS Code/Size (FAR Case 2005-006) .....	82
Item XI—Technical Amendments .....	82
Looseleaf Only Corrections .....	82
<b>November 14, 2005</b>	<b>Number 2005-06 Correction</b>
Item I—Information Technology Security (FAR Case 2004-018, Correction) .....	83
Item IX—Accounting for Unallowable Costs (FAR Case 2004-006, Correction) .....	83
<b>September 30, 2005</b>	<b>Number 2005-06</b>
Item I—Information Technology Security (FAR Case 2004-018) .....	83
Item II—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004-001).....	83
Item III—Title 40 of United States Code Reference Corrections (FAR Case 2005-010).....	84
Item IV—Implementation of the Anti-Lobbying Statute(FAR Case 1989-093) .....	84
Item V—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004-037).....	84
Item VI—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program(FAR Case 2004-036).....	84
Item VII—Powers of Attorney for Bid Bonds (FAR Case 2003-029) .....	85
Item VIII—Expiration of the Price Evaluation Adjustment(Interim) (FAR Case 2005-002).....	85
Item IX—Accounting for Unallowable Costs (FAR Case 2004-006) .....	85
Item X—Reimbursement of Relocation Costs on a Lump-Sum Basis(FAR Case 2003-002) .....	85
Item XI—Training and Education Cost Principle(FAR Case 2001-021) .....	85
Looseleaf Only Corrections .....	86
<b>July 27, 2005</b>	<b>Number 2005-05</b>
Item I—Definition of Information Technology (FAR Case 2004-030).....	86
Item II—Documentation Requirement for Limited Sources under Federal Supply Schedules (FAR Case 2005-004).....	86
Item III—Payment Withholding (FAR Case 2004-003).....	87
Item IV—Confirmation of HUBZone Certification (FAR Case 2005-009) .....	87
Item V—Government Property Rental and Special Tooling (FAR Case 2002-015).....	87
Item VI—Technical Amendment .....	87
<b>June 8, 2005</b>	<b>Number 2005-04</b>
Item I—Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2004-010) ...	87
Item II—Telecommuting for Federal Contractors(FAR Case 2003-025).....	88
Item III—Incentives for Use of Performance-Based Contracting for Services (FAR Case 2004-004) .....	88

Item IV—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004-035).....	88
Item V—Applicability of SDB and HUBZone Price Evaluation Factor(FAR Case 2003-015).....	88
Item VI—Labor Standards for Contracts Involving Construction(FAR Case 2002-004).....	89
Item VII—Deferred Compensation and Postretirement Benefits Other Than Pensions (FAR Case 2001-031).....	89
Item VIII—Gains and Losses (FAR Case 2004-005).....	89
<hr/>	
<b>April 11, 2005</b>	<b>Number 2005-03</b>
	<b>90</b>
Item I—Purchases From Federal Prison Industries—Requirement for Market Research (FAR Case 2003-023) (Interim).....	90
Item II—Section 508 Micropurchase Exemption (FAR Case 2004-020).....	90
Item III—Technical Amendments .....	90
<hr/>	
<b>March 23, 2005</b>	<b>Number 2005-02</b>
	<b>90</b>
Procurement Program for Service-Disabled Veteran-Owned Small Business Concerns (FAR Case 2004-002) ...	91
<hr/>	
<b>March 9, 2005</b>	<b>Number 2005-01</b>
	<b>92</b>
Item I—Improvements in Contracting for Architect-Engineer Services (Interim) (FAR Case 2004-001).....	92
Item II—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004-037) (Interim) .....	92
Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program(FAR Case 2004-034).....	92
Item IV—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case2004-036) (Interim) .....	93
Item V—Nonavailable Articles—Policy (FAR Case 2003-021).....	93
Item VI—Cost Accounting Standards Administration (FAR Case 1999-025).....	93
Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003-024) (Interim).....	93
Item VIII—Use of FAR Clause 52. 244-6, Subcontracts for Commercial Items (FAR Case 2002-021).....	94
Item IX—Technical Amendments .....	94

**JULY 5, 2011****NUMBER 2005-53****Item I—Equal Opportunity for Veterans (FAR Case 2009-007)**

*[Effective August 4, 2011]* The interim rule, published September 29, 2010, is adopted as final with minor changes. A definition from the clause at FAR 52.222-35 for “executive and senior management” is added to FAR subpart 22.13. The interim rule implemented Department of Labor regulations on equal opportunity provisions for various categories of military veterans.

**Item II—Unique Procurement Instrument Identifier (FAR Case 2009-023)**

*[Effective August 4, 2011]* This final rule amends the FAR to define the requirement for an agency unique procurement instrument identifier (PIID) and, to extend the requirement for using PIIDs to solicitations, contracts, and related procurement instruments.

This final rule adds two new definitions at 4.001, revises 4.605(a), and adds a new FAR subpart 4.16—Unique Procurement Instrument Identifiers, to prescribe policies and procedures for assigning PIIDs. The Government expects that these changes will reduce data errors and interoperability problems across the Federal Government’s business processes which were created by inconsistent and non-unique PIID assignment and use. These changes will not impose new requirements on small businesses, as the rule only addresses internal Government policy and procedures.

**Item III—Uniform Suspension and Debarment Requirement (FAR Case 2009-036)**

*[Effective August 4, 2011]* This rule adopts as final, with minor changes, an interim rule which implemented section 815 of the National Defense Authorization Act for Fiscal Year 2010, Pub. L. 111-84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for commercially available off-the-shelf items, and in the case of commercial items, first-tier subcontracts only.

This requirement protects the Government against contracting with entities at any tier who are debarred, suspended, or proposed for debarment. This rule does not have a significant impact on the Government, contractors, or any automated systems.

**Item IV—Extension of Sunset Date for Protests of Task and Delivery Orders (FAR Case 2011-015) (Interim)**

*[Effective July 5, 2011]* This interim rule amends the FAR to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383). Section 825 extends the sunset date for protests against awards of task or delivery orders by DoD, NASA, and the Coast Guard from May 27, 2011 to September 30, 2016. The sunset date for protests against the award of task or delivery orders by other Federal agencies remains May 27, 2011. With this change, contractors will no longer be able to protest task or delivery orders awarded by agencies other than DoD, NASA, and the Coast Guard. There is no effect on Government automated systems.

**Item V—Encouraging Contractor Policies to Ban Text Messaging While Driving (FAR Case 2009-028)**

*[Effective August 4, 2011]* This final rule adopts, with changes, the interim rule published in the Federal Register at 75 FR 60264 on September 29, 2010, to implement Executive Order 13513 (October 1, 2009), published in the Federal Register at 74 FR 51225 on October 6, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.” This final rule revises FAR clause 52.223-18 to encourage the adoption and enforcement of policies that ban text messaging while driving company-owned or –rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. The final rule also revises the language in the clause to encourage contractors to conduct initiatives such as: (1) establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and (2) education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts.

**Item VI—TINA Interest Calculations (FAR Case 2009-034)**

*[Effective August 4, 2011]* DoD, GSA, and NASA are publishing a final rule amending the FAR to revise the clauses at FAR 52.214-27, FAR 52.215-10, and FAR 52.215-11 to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.

**MAY 31, 2011****NUMBER 2005-52****Item I—Women-Owned Small Business (WOSB) Program (Interim) (FAR Case 2010-015)**

*[Effective April 1, 2011]* This interim rule amends the FAR to add subpart 19.15, Women-Owned Small Business Program, which will assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small business (WOSB) concerns.

**Item I—Sustainable Acquisition (FAR Case 2010-001) (Interim)**

*[Effective May 31, 2011]* This interim rule amends the FAR to implement Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. It requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies, materials, products, and services. Federal agencies are additionally required to implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices in applicable acquisitions. Contractors will be required to support the goals of an agency’s environmental management system.

**Item II—Contract Closeout (FAR Case 2008-020)**

*[Effective June 30, 2011]* This final rule amends the FAR procedures for closing out contracts. A proposed rule was published August 20, 2009. This rule revises procedures and sets forth a timeframe for clearing final patent reports; updates quick-closeout procedures, including

applicable thresholds; sets forth a description of an adequate final indirect cost rate proposal and supporting data; and adds language for withholding fees to protect the Government's interest and encourage timely submissions of an adequate final indirect cost rate proposal. The rule does not impose any additional requirements on small businesses.

### **Item III—Prohibition on Contracting with Inverted Domestic Corporations (FAR Case 2008-009)**

*[Effective May 31, 2011]* This final rule implements section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117) and similar restrictions in 2008 and 2009 appropriations acts, which prohibit the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one, except as permitted in specific exceptions as set forth in the rule. The rule does not impose any requirements on small businesses.

### **Item IV—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009-039)**

*[Effective May 31, 2011]* This rule adopts as final, without change, an interim rule. The interim rule amended the FAR to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

### **Item V—Oversight of Contractor Ethics Programs (FAR Case 2010-017)**

*[Effective June 30, 2011]* This final rule modifies FAR 42.302, Contract Administration Functions, to add to the list of contract administration functions, the function of ensuring that contractors have implemented FAR 52.203-13, Contractor Code of Business Ethics and Conduct. Contracting officers may ask to see a contractor's code of ethics or a contractor's ethics program, but the contracting officer is not required to ask for a copy of any documents.

### **Item VI—Technical Amendments**

*[Effective May 31, 2011]* Editorial changes are made at FAR 53.301-1447, 53.301-1449 and 53.302-347.

**APRIL 1, 2011**

**NUMBER 2005-51**

### **Item I—Women-Owned Small Business (WOSB) Program (Interim) (FAR Case 2010-015)**

*[Effective April 1, 2011]* This interim rule amends the FAR to add subpart 19.15, Women-Owned Small Business Program, which will assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small business (WOSB) concerns.

Agencies may restrict competition to economically disadvantaged women-owned small business (EDWOSB) concerns for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration has determined that WOSB concerns are underrepresented in Federal procurement. For NAICS code industries where

WOSB concerns are not just underrepresented, but substantially underrepresented, agencies may restrict competition to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

#### **Item II—Clarification of Standard Form 26—Award/Contract (FAR Case 2009-029)**

*[Effective May 2, 2011]* This final rule amends the FAR to revise FAR part 53 to amend the Standard Form (SF) 26, Award/Contract, above blocks 17 and 18 and in block 18 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed bid contract. The changes will not prevent contracting officers from using block 17 of the SF 26 when awarding negotiated procurements in which the signature of both parties, on a single document, is required; it will only prohibit them from using block 18 of the SF 26 when awarding negotiated procurements.

**MARCH 16, 2011**

**NUMBER 2005-50**

#### **Item I—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008-030) (Interim)**

*[Effective March 16, 2011]* This interim rule amends the FAR to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). This law aligns with the goal of the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which is to reduce waste, fraud, and abuse in Government contracting. This rule provides internal regulatory guidance on the proper use and management of all contracts, specifically cost-reimbursement contracts. The rule identifies (1) circumstances when cost-reimbursement contracts are appropriate; (2) acquisition plan findings required to support the contract type selection; and (3) the acquisition resources necessary to award and manage a cost-reimbursement contract.

#### **Item II—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007-012) (Interim)**

*[Effective May 16, 2011]* This interim rule amends the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 863 mandates enhanced competition for orders placed under multiple-award contracts, including GSA's Federal Supply Schedules. If an order over the simplified acquisition threshold does not follow the section 863 competitive procedures, section 863 requires that a notice and the determination of an exception be published in FedBizOpps within 14 days after award.

The interim rule relocates all procedures for establishing a Blanket Purchase Agreement (BPA) or placing an order under a BPA in one subsection, FAR 8.405-3. New BPAs must be established in accordance with the new competition standard. Orders over the simplified acquisition threshold against a new multiple-award BPA must meet the new competition standards; use is discretionary for existing multiple-award BPAs.

For orders under FAR part 16 task- and delivery-order contracts, orders over the simplified acquisition threshold must meet the new competition procedures; each contract holder must receive notice of the intent to make a purchase.

### **Item III—Justification and Approval of Sole-Source 8(a) Contracts (2009-038) (Interim)**

*[Effective March 16, 2011]* This interim rule amends the FAR to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). Section 811 prohibits the award of a sole-source contract in an amount over \$20 million under the 8(a) program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official and making public the J&A and related information. This is a new internal Government requirement for the development and approval of a sole-source J&A for 8(a) sole-source awards over \$20 million. It neither prohibits such awards nor increases the qualifications required of 8(a) firms. No automated systems are impacted.

### **Item IV—Additional Requirements for Market Research (FAR Case 2008-007)**

*[Effective April 15, 2011]* This final rule adopts, with changes, the interim rule that amended the FAR to implement section 826 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 826, entitled “Market Research,” established new requirements for agencies subject to Title 10, United States Code. As a matter of policy, this provision of law was applied to contracts awarded by all executive agencies. The rule requires that market research must be conducted before an agency places a task or delivery order in excess of the simplified acquisition threshold under an indefinite-delivery indefinite-quantity contract. In addition, a prime contractor with a contract in excess of \$5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold. Among other changes, the final rule also deletes the language added to FAR 52.244-6 (Alternate I) and relocates it to a new FAR clause 52.210-1, Market Research.

### **Item V—Socioeconomic Program Parity (FAR Case 2011-004) (Interim)**

*[Effective March 16, 2011]* This interim rule amends the FAR to implement section 1347 of the “Small Business Jobs Act of 2010” (Pub. L. 111-240) and the Small Business Administration regulations governing specific contracting and business assistance programs. Section 1347 changed the word “shall” to “may” at section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)), thereby permitting a contracting officer to use discretion when determining whether an acquisition will be restricted to a small business participating in the 8(a) Business Development Program, the Historically Underutilized Business Zone Program, or the Service-Disabled Veteran-Owned Small Business Program.

### **Item VI—Use of Commercial Services Item Authority (FAR Case 2008-034)**

*[Effective March 16, 2011]* This final rule adopts, without change, an interim rule that implemented section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold

competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

#### **Item VII—Trade Agreements Thresholds (FAR Case 2009-040)**

*[Effective March 16, 2011]* This final rule adopts, without change, an interim rule that amended the FAR to adjust 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 a pre-determined formula under the agreements.

#### **Item VIII—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009-025)**

*[Effective March 16, 2011]* This final rule adopts, without change, the interim rule that amended the FAR to revise FAR 30.201-4(c), 30.201-4(d)(1), 52.230-4, and 52.230-6 to maintain consistency between FAR and Cost Accounting Standards (CAS) regarding the administration of the Cost Accounting Standard Board's (CASB) rules, regulations and standards. This revision was necessitated by the CASB publishing a final rule in the Federal Register on March 26, 2008 (73 FR 15939) which implemented the revised clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns.

#### **Item IX—Compensation for Personal Services (FAR Case 2009-026)**

*[Effective March 16, 2011]* This final rule adopts, without change, the interim rule that amended the FAR to align the existing FAR 31.205-6(q)(2)(i) through (vi) with the changes made in Cost Accounting Standards (CAS) Board standards 412 “Cost Accounting Standard for composition and measurement of pension cost,” and 415 “Accounting for the cost of deferred compensation.” Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

#### **Item X—Technical Amendments**

*[Effective March 16, 2011]* This document makes amendments to the FAR in order to make editorial changes at FAR 18.204, 19.201, and 52.212-3.

**JANUARY 24, 2011****NUMBER 2005-49****Public Access to the Federal Awardee Performance and Integrity Information System (FAR Case 2010-016) (Interim)**

*[Effective January 24, 2011]* This interim rule amends the FAR to implement section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), enacted July 29, 2010. Section 3010 requires that the Administrator of the General Services post all information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, on a publicly available website.

This interim rule notifies contractors that FAPIIS data, excluding past performance reviews, will be available to the public after a certain date, and creates a new FAR clause to support the posting of information in FAPIIS. Contracting officers are encouraged to the extent feasible to amend existing solicitations in accordance with FAR 1.108(d), in order to include this revised clause in contracts to be awarded on or after the effective date of this rule.

**DECEMBER 30, 2010****NUMBER 2005-48****Item I—Repeal of the Small Business Competitiveness Demonstration Program (FAR Case 2011-005)**

*[Effective January 31, 2011]* This final rule amends the FAR to remove FAR subpart 19.10, Small Business Competitiveness Demonstration Program. This change is necessary to address the requirements of section 1335 of the Small Business Jobs Act of 2010 (Pub. L. 111-240) which repealed the Small Business Competitiveness Demonstration Program.

This final rule also removes the following clauses: FAR 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program; FAR 52.219-20, Notice of Emerging Small Business Set-Aside; and FAR 52.219-21, Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.

**Item II—Personal Identity Verification of Contractor Personnel (FAR Case 2009-027)**

*[Effective January 31, 2011]* This final rule amends the FAR to provide additional regulatory coverage in subpart 4.13 and in FAR clause 52.204-9 to reinforce the requirement of collecting from contractors all forms of Government provided identification once they are no longer needed to support a contract. The contracting officer may delay final payment under a contract if the contractor fails to comply with these requirements.

**Item III—Terminating Contracts (FAR Case 2009-031)**

*[Effective January 31, 2011]* This final rule amends the FAR to clarify procedures regarding the applicability of FAR part 49, Termination of Contracts, to commercial item contracts. Minor changes are made to the proposed rule published in the Federal Register at 75 FR 28228 on May 20, 2010.

The rule specifically impacts contracting officers and contractors by clarifying that FAR part 49 does not apply to the acquisition of commercial items when using procedures at FAR part 12. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small businesses.

#### **Item IV—Payrolls and Basic Records (FAR Case 2009-018)**

*[Effective December 30, 2010]* This rule adopts as final, with a minor change, the interim rule published in the Federal Register at 75 FR 34286 on June 16, 2010. The interim rule amended the FAR at 52.222-8, Payrolls and Basic Records, to delete the requirement for submission of full social security numbers and home addresses of individual workers on weekly payroll transmittals by prime contractors. The rule requires contractors and subcontractors to maintain the full social security number and current address of each covered worker, and provide them upon request to the contracting officer, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The rule recognizes the Department of Labor’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.

**DECEMBER 13, 2010**

**NUMBER 2005-47**

#### **Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR case 2010-006) (Interim)**

*[Effective December 13, 2010]* This interim rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (DoL). The Executive Order requires contractors and subcontractors to post a notice that includes employee rights under the National Labor Relations Act, 29 U.S.C. 151 et seq. This Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self organize and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. This FAR interim rule establishes a new subpart 22.16, Notification of Employee Rights under the National Labor Relations Act. The rule also creates a new FAR clause 52.222-40, Notification of Employee Rights under the National Labor Relations Act. In addition, this rule revises the FAR clauses at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244-6, Subcontracts for Commercial Items, to include the requirements of the new FAR clause 52.222-40. The required employee notice, “Notification of Employee Rights Under the National Labor Relations Act,” may be obtained from the DoL; downloaded from a DoL website; provided by the Federal contracting agency, if requested; or reproduced and used as exact duplicate copies of the DoL’s official poster (see FAR 52.222- 40(c)). Contracting officers shall insert the clause at FAR 52.222-40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

- (1) Under the simplified acquisition threshold. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;
- (2) For work performed exclusively outside the United States; or
- (3) Covered (in their entirety) by an exemption granted by the Secretary.

A contracting agency may modify the clause at FAR 52.222-40, if necessary, to reflect an exemption granted by the Secretary of the Department of Labor (see 22.1603(b)).

### **Item II—HUBZone Program Revisions (FAR Case 2006-005)**

*[Effective January 12, 2011]* This FAR final rule implements the Small Business Administration (SBA) final rule published in the Federal Register at 69 FR 29411 on May 24, 2004, and an interim rule published in the Federal Register at 70 FR 51243 on August 30, 2005, amending its HUBZone regulations at 13 CFR part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act of 2005, and other various policy changes. The FAR is amended to—

- (1) Require a HUBZone small business concern to be a HUBZone small business concern both at the time of its initial offer and at the time of contract award; and
- (2) Require that HUBZone concerns provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility.

In addition, in accordance with 13 CFR 126.700, for general construction or construction by special trade contractors, a HUBZone small business concern must spend at least 50 percent of the cost of contract performance incurred for personnel on its own employees or subcontract employees of other HUBZone small business concerns. This final rule also amends FAR clause 52.219-3, Notice of Total HUBZone Set-Aside, and FAR clause 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, to include an Alternate I, to be used to waive the 50 percent requirement only after determining that at least two HUBZone small business concerns cannot meet the requirement. However, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

### **Item III—Preventing Abuse of Interagency Contracts (FAR Case 2008-032) (Interim)**

*[Effective December 13, 2010]* This interim rule implements section 865 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009. FAR subpart 17.5 now addresses all interagency acquisitions, not just those made under the Economy Act authority. A new subsection 17.502-1 is added to require that all interagency acquisitions include a determination of best procurement approach. For an assisted acquisition between the servicing agency and the requesting agency, this subsection now requires a written agreement that establishes the general terms and conditions governing the relationship between the parties. Subsection 17.502-2 contains business-case analysis requirements when an agency wishes to

establish a contract that would be used by other agencies. There is a statutory exception included in subpart 17.5 for orders of \$500,000 or less issued against Federal Supply Schedules.

**Item IV—Small Disadvantaged Business Program Self-Certification of Subcontractors (FAR Case 2009-019) (Interim)**

*[Effective December 13, 2010]* This interim rule amends the FAR by allowing small disadvantaged businesses (SDBs) to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities. This change implements revisions made by the Small Business Administration (SBA) to its SDB regulations. This case only addresses the subcontracting status portion of the SBA final rule for Small Disadvantaged Business certification. The Small Disadvantaged Business certification for prime contracts will be addressed in a future rule. This change removes a cost of compliance burden on SDB subcontractors seeking SBA certification.

**Item V—Uniform Suspension and Debarment Requirement (FAR Case 2009-036) (Interim)**

*[Effective December 13, 2010]* This interim rule amends the FAR at parts 9 and 52 to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for the acquisition of commercially available off-the-shelf items, and in the case of contracts for the acquisition of commercial items, first-tier subcontracts only.

This requirement will protect the Government against contracting with entities at any tier who are suspended, debarred or proposed for debarment. This rule does not have a significant impact on the Government, contractors or any automated systems.

**Item VI—Limitations on Pass-Through Charges (FAR Case 2008-031) This final rule adopts the interim rule published in the Federal Register at 74 FR 52853, October 14, 2009, as a final rule with minor changes.**

*[Effective January 12, 2011]* This interim rule amended the FAR to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Public Law 110-417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Public Law 109-364). This legislation required the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (i.e., passthrough charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

**Item VII—Technical Amendments**

**SEPTEMBER 29, 2010****NUMBER 2005-46.1****Looseleaf pages****SEPTEMBER 29, 2010****NUMBER 2005-46****Item I—Equal Opportunity for Veterans (FAR Case 2009-007) (Interim)**

*[Effective September 29, 2010]* This interim rule with request for comments implements the Department of Labor's (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule published in the Federal Register at 72 FR 44393 on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA), as amended by the Jobs for Veterans Act (JVA). The rule re-titles FAR subpart 22.13 from "Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" to "Equal Opportunity for Veterans." Accordingly, FAR clause 52.222-35 is also renamed "Equal Opportunity for Veterans" and incorporates the new categories and definitions of protected veterans as established by DoL. In addition, the FAR clause at 52.222-37, "Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" is renamed "Employment Reports on Veterans" and the new DoL requirements for using the VETS-100A report are incorporated. Lastly, the FAR provision at 52.222-38, "Compliance with Veterans' Employment Reporting Requirements," is revised to incorporate new title references for FAR 52.222-37 and the new report form VETS-100A.

**Item II—Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (FAR Case 2010-012) (Interim)**

*[Effective September 29, 2010]* This interim rule amends the FAR by enhancing efforts to enforce sanctions with Iran. The rule implements requirements imposed by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), specifically sections 102 and 106. To implement section 102, the FAR will require certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. This rule also partially implements section 106 of Pub. L. 111-195, which imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of Section 106 in FAR Case 2010-018. This rule will have little effect on United States small business concerns, because such dealings with Iran are already prohibited in the United States.

**Item III—Termination for Default Reporting (FAR Case 2008-016)**

*[Effective October 29, 2010]* This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR parts 8, 12, 15, 42, and 49. The purpose of the rule is to establish procedures for contracting officers to provide contractor information into the Federal Awardee Performance & Integrity Information System (FAPIIS) module of Past Performance Information System (PPIRS). This case sets forth requirements for reporting defective cost or pricing data and terminations for cause or default and any amendments. Evaluation of past performance information, especially terminations,

manages risks associated with timely, effective and cost efficient completion of contracts, a key objective of the President's March 4, 2009, Memorandum on Government Contracting.

#### **Item IV—Award-Fee Language Revision (FAR Case 2008-008)**

*[Effective October 29, 2010]* This final rule converts the interim rule published in the Federal Register at 74 FR 52856 on October 14, 2009, to a final rule with minor changes. This final rule amends the FAR to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and section 867 of the Duncan Hunter 2009 National Defense Authorization Act for Fiscal Year 2009. This rule requires agencies to—

- (1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;
- (2) Clarify that a base fee amount greater than zero may be included in a cost-plus-award-fee type contract at the discretion of the contracting officer;
- (3) Prescribe narrative ratings that will be utilized in award-fee evaluations;
- (4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;
- (5) Conduct a risk and cost-benefit analysis and consider the results of the analysis when determining whether to use an incentive-fee type contract or not;
- (6) Include specific content in the award-fee plans; and
- (7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

#### **Item V—Offering a Construction Requirement—8(a) Program (FAR Case 2009-020)**

*[Effective October 29, 2010]* This final rule amends the FAR to revise FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), specifically FAR 19.804-2(b) to conform to the Small Business Administration (SBA) regulations. The SBA regulation 13 CFR 124.502(b)(2) requires that the offering letter for an open construction requirement be submitted to the SBA District Office for the geographical area where the work is to be performed. The SBA regulation 13 CFR 124.502(b)(3) requires that the offering letter for a construction requirement offered on behalf of a specific participant be submitted to the SBA District Office servicing that concern. This rule revises FAR 19.804-2 accordingly.

#### **Item VI—Encouraging Contractor Policies to Ban Text Messaging While Driving (FAR Case 2009-028) (Interim)**

*[Effective September 29, 2010]* This interim rule amends the FAR to implement Executive Order 13513, entitled —Federal Leadership on Reducing Text Messaging while Driving, which was issued on October 1, 2009 (74 FR 51225, October 6, 2009). Section 4 of the Executive order requires each Federal agency, in procurement contracts, entered into after the date of the order, to

encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving company-owned or –rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Section 4 also requires Federal agencies to encourage contractors to conduct initiatives such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts. Contracting officers are encouraged to modify existing contracts to include the FAR clause.

**Item VII—Buy American Exemption for Commercial Information Technology—  
Construction Material (FAR Case 2009-039) (Interim)**

*[Effective September 29, 2010]* This interim rule implements section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

**AUGUST 30, 2010**

**NUMBER 2005-45**

The Federal Acquisition Secretariat is issuing FAC 2005-45 to amend the Federal Acquisition Regulation (FAR) in the following areas: (1) inflation adjustment of acquisition-related thresholds; (2) definition of cost or pricing data; and (3) American Recovery and Reinvestment Act - Buy American Requirements for construction material.

**Item I, Inflation Adjustment of Acquisition-Related Thresholds**

*[Effective October 1, 2010]* This final rule amends the FAR to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2010.

This is the second review of FAR acquisition-related thresholds. The Councils published a proposed rule in the Federal Register at 75 FR 5716, February 4, 2010.

The effect of the final rule on heavily used thresholds is the same as stated in the preamble to the proposed rule:

- The micro-purchase base threshold of \$3,000 (FAR 2.101) is not changed.
- The simplified acquisition threshold (FAR 2.101) is raised from \$100,000 to \$150,000.
- The FedBizOpps preaward and post-award notices (Part 5) remain at \$25,000 because of trade agreements.
- Commercial items test program ceiling (FAR 13.500) is raised from \$5,500,000 to \$6,500,000.

- □ The cost or pricing data threshold (FAR 15.403–4) is raised from \$650,000 to \$700,000.
- □ The prime contractor subcontracting plan (FAR 19.702) floor is raised from \$550,000 to \$650,000, and the construction threshold of \$1,000,000 increases to \$1,500,000.

## **Item II, Definition of Cost or Pricing Data**

*[Effective October 1, 2010]* This final rule amends the FAR by redefining “cost or pricing data,” adding a definition of “certified cost or pricing data,” and changing the term “information other than cost or pricing data,” to “data other than certified cost or pricing data.” The rule clarifies the existing authority for contracting officers to require certified cost or pricing data or data other than certified cost or pricing data, and the existing requirements for submission of the various types of pricing data. The rule is required to eliminate confusion and misunderstanding, especially regarding the authority of the contracting officer to request data other than certified cost or pricing data when there is no other means to determine that proposed prices are fair and reasonable. Most significantly, the rule clarifies that data other than certified cost or pricing data may include the identical types of data as certified cost or pricing data but without the certification. Because the rule clarifies existing requirements, it will have only minimal impact on the Government, offerors, and automated systems.

## **Item III, American Recovery and Reinvestment Act of 2009 - Buy American Requirements for Construction Material**

*[Effective October 1, 2010]* This final rule converts the interim rule published in the Federal Register at 74 FR 14623, March 31, 2009, to a final rule with changes. This final rule implements section 1605 of Division A of the American Recovery and Reinvestment Act (Recovery Act) of 2009. It prohibits the use of funds appropriated for or otherwise made available by the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605 mandates application of the Recovery Act Buy American requirement in a manner consistent with U.S. obligations under international agreements. Least developed countries continue to be treated as designated countries per congressional direction. Section 1605 also provides for waivers under certain limited circumstances.

**JULY 23, 2010**

**NUMBER 2005-43 CORRECTION**

Federal Acquisition Circular (FAC) 2005-43, which was published at 75 FR 43090, July 23, 2010, is corrected as specified below:

### **Item III—Recovery Act Subcontract Reporting Procedures (FAR Case 2010-008, Correction) (Interim)**

The interim rule contained a typographical error. Section 52.204-11 is corrected by removing from the introductory text of paragraph (d)(10) “(d)(1)(i)” and adding “(d)(10)(i)” in its place.

**JULY 8, 2010****NUMBER 2005-44****Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008-039) (Interim)**

*[Effective July 8, 2010]* This interim rule amends the Federal Acquisition Regulation to implement section 2 of Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), which requires the Office of Management and Budget (OMB) to establish a free, public, website containing full disclosure of all Federal contract award information. This rule will require contractors to report executive compensation and first-tier subcontract awards on contracts and orders expected to be \$25,000 or more (including all options), except classified contracts and contracts with individuals. This information will be available to the public. To minimize the burden implementing the Transparency Act will impose on both Federal agencies and contractors, the Councils intend to implement the reporting requirements in a phased approach:

1. Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more.
2. From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more.
3. Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more.

The rule is applicable to all solicitations and contracts with a value of \$25,000 or more. The clause is required in commercial item contracts, including commercially available off the-shelf (COTS) item contracts, as well as actions under the simplified acquisition threshold, meeting the \$25,000 threshold. The clause is not required in classified solicitations and contracts, and contracts with individuals.

**JULY 2, 2010****NUMBER 2005-43**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-43 is effective July 2, 2010, except for Items I, II, and IV, which are effective August 2, 2010.

**Item I—Government Property (FAR Case 2008-011)**

*[Effective August 2, 2010]* This final rule amends the FAR to revise FAR part 45 and its associated clauses. Changes are being made to FAR parts 2, 4, 15, 32, 42, 45, and 52. These changes are to clarify and correct the previous FAR rule for part 45, Government Property, published under Federal Acquisition Circular 2005-17, FAR case 2004-025, May 15, 2007, (72 FR 27364). Minor changes are made to the proposed rule published August 6, 2009 (74 FR 39262).

The rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property. The rule does not affect the method of managing Government property. The rule merely clarifies and corrects the previous FAR rule.

#### **Item II—Registry of Disaster Response Contractors (FAR Case 2008-035)**

*[Effective August 2, 2010]* This final rule adopts, without change, the interim rule implementing Pub. L. 109-295, the Department of Homeland Security Appropriations Act, 2007, section 697, which requires the establishment and maintenance of a registry of disaster response contractors. The Disaster Response Registry is located at [www.ccr.gov](http://www.ccr.gov). The Federal Emergency Management Agency (within the Department of Homeland Security) has a link to the registry for vendors on its website at <http://www.fema.gov/business/contractor.shtm>. The Registry covers domestic disaster and emergency relief activities.

#### **Item III—Recovery Act Subcontract Reporting Procedures (FAR Case 2010-008) (Interim)**

*[Effective July 2, 2010]* This interim rule amends the FAR to revise the clause at FAR 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements. The revised clause will require first-tier subcontractors with Recovery Act funded awards of \$25,000 or more, to report jobs information to the prime contractor for reporting into [FederalReporting.gov](http://FederalReporting.gov). It also will require the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

The revised clause will be used for all new solicitations and awards issued on or after the effective date of this interim rule. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contain the original clause FAR 52.204-11 (March 2009). Therefore, this interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009.

#### **Item IV—Clarification of Criteria for Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns (FAR Case 2008-023)**

*[Effective August 2, 2010]* This final rule amends FAR 19.1406(a) to clarify the criteria that need to be met in order to conduct a sole source service-disabled veteran-owned small business (SDVOSB) concern acquisition. The FAR language is amended to be consistent with the Veterans Benefit Act of 2003 (15 U.S.C. 657f) and the Small Business Administration's regulation (13 CFR 125.20) that implements the Act. This final rule also amends FAR 19.1306(a) to clarify the criteria that need to be met in order to conduct a sole source for Historically Underutilized Business Zone (HUBZone) small business concern acquisitions. These amendments to the FAR alleviate confusion for contracting officers on the appropriate use of the criteria needed to conduct sole source HUBZONE small business and SDVOSB concern acquisitions.

#### **Item V—Trade Agreements Thresholds (FAR Case 2009-040) (Interim)**

*[Effective July 2, 2010]* This interim rule adjusts 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 a pre-determined formula under the agreements.

**JULY 16, 2010****NUMBER 2005-42 - 30 DAYS (REVISED PAGES)**

Due to amendments issued with effective dates prior to July 16, 2010, replace the July 16, 2010, pages issued in FAC 2005-42...

**JUNE 16, 2010****NUMBER 2005-42**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-42 is effective June 16, 2010, except for Items II, III, IV, VI, and VIII which are effective July 16, 2010.

**Item I—American Recovery and Reinvestment Act (the Recovery Act) of 2009—Whistleblower Protections (FAR Case 2009-012)**

*[Effective June 16, 2010]* This rule adopts as final, with changes, an interim rule published in the Federal Register at 74 FR 14633 on March 31, 2009, amending the FAR to implement the American Recovery and Reinvestment Act of 2009 (the Recovery Act) with respect to section 1553 of Division A, Protecting State and Local Government and Contractor Whistleblowers. This rule prohibits non-Federal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information.

**Item II—Electronic Subcontracting Reporting System (eSRS) (FAR Case 2005-040)**

*[Effective July 16, 2010]* 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.

**Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (FAR Case 2009-010)**

*[Effective July 16, 2010]* This rule adopts as final, with minor changes, the interim rule published in the Federal Register at 74 FR 14636 on March 31, 2009. The interim rule amended the FAR to implement section 6.2 of the Office of Management and Budget (OMB) Memorandum M-09-10, dated February 18, 2009, entitled “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009” (the Recovery Act). Section 6.2 of the OMB guidance mandates accountability and transparency relative to publicizing contract actions. The OMB guidance requires that the FAR be amended to reflect—

1. Unique requirements for posting of pre-solicitation notices;
2. Unique requirements for announcing contract awards;
3. Unique requirements for entering awards into the Federal Procurement Data System (FPDS); and
4. Unique requirements for actions that are not fixed-price or competitive.

OMB Memorandum M-09-15, dated April 3, 2009, entitled “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” supplements, amends, and clarifies the initial guidance in OMB Memorandum M-09-10. The final rule makes the following amendments:

- FAR 5.704(a)(2) to clarify that modifications of orders are not required to be publicized at the preaward stage.
- FAR 5.704(b) to require contracting officers to identify proposed contract actions, funded in whole or in part by the Recovery Act, by using the instructions that are at FAR 5.704(b) and available in the Recovery FAQs at the GPE <https://www.fedbizopps.gov>.
- FAR 5.704(c) and 5.705(a) to ensure that the description required by FAR 5.207(a)(16) clearly defines the elements of the requirement to the general public.
- FAR 5.705(b) to require contracting officers to include in the description of the contract action a statement specifically noting if the action was not awarded competitively, or was not fixed-price, or was neither competitive nor fixed-price.

**Item IV—Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (FAR Case 2008-003)**

*[Effective July 16, 2010]* This final rule adopts, with changes, an interim rule published in the Federal Register at 74 FR 2731 on January 15, 2009. The rule amends the FAR to implement the requirements of Section 844 of the National Defense Authorization Act for Fiscal Year 2008. The interim rule required the head of an executive agency to make certain justification and approval documents relating to the use of noncompetitive procedures in Federal contracting be posted on the website of an agency and through FedBizOpps. The final rule requires that if the justification is a brand name justification under FAR 6.302-1(c) then it must be posted with the solicitation. Justifications must remain posted for a minimum of 30 days. The final rule clarifies that posting the justification does not apply if it would disclose the executive agency’s needs and disclosure of such needs would compromise national security or create other security risks. The final rule also establishes procedures at FAR 13.501 similar to procedures at FAR 6.305. The rule is intended to enhance competition in Federal contracting and provide greater transparency to the taxpayer.

**Item V—Additional Requirements for Market Research (FAR Case 2008-007) (Interim)**

*[Effective June 16, 2010]* This interim rule amends the FAR at parts 10, 44, and 52 by adding market research requirements. This change implements Section 826 of Pub. L. 110-181, the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA). As a matter of policy, this provision of law is applied to contracts awarded by all executive agencies. This rule requires that market research must be accomplished before an agency places an indefinite-delivery/indefinite-quantity (ID/IQ) task or delivery order in excess of the simplified acquisition threshold. In addition, a prime contractor with a contract in excess of \$5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold when the contractor is acting as a purchasing agent for the Government. This interim rule is applicable to any solicitations issued and contracts (to include any subcontracts issued under such contracts) awarded on or after the effective date of the rule.

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

*[Effective July 16, 2010]* 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.

**Item VII—New Designated Country—Taiwan (FAR Case 2009-014)**

*[Effective June 16, 2010]* 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.

**Item VIII—Nonavailable Articles (FAR Case 2009-013)**

*[Effective July 16, 2010]* 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.

**Item IX—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009-025) (Interim)**

*[Effective June 16, 2010]* This interim rule amends the FAR to align the existing FAR clause 52.230-4 with the changes made in Cost Accounting Standards (CAS) Board clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

On March 26, 2008, the CAS Board published, without change from the proposed rule (72 FR 32829, June 14, 2007), a final rule in the Federal Register at 73 FR 15939 to utilize the clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns. This rule is necessary in order to maintain consistency between CAS and FAR in matters relating to the administration of CAS.

**Item X—Compensation for Personal Services (FAR Case 2009-026) (Interim)**

*[Effective June 16, 2010]* This interim rule amends the FAR to align the existing FAR 31.205(q)(2)(i) and (ii) with the changes made in Cost Accounting Standards (CAS) Board Standards 412, “Cost Accounting Standard for composition and measurement of pension cost,” and 415, “Accounting for the cost of deferred compensation.” Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

**Item XI—Payrolls and Basic Records (FAR Case 2009-018) (Interim)**

*[Effective June 16, 2010]* 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.

## **Item XII—Technical Amendments**

*[Effective June 16, 2010]* This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes at FAR 31.205-6, 31.205-16, 49.505, and 52.222-34.

**APRIL 13, 2010**

**NUMBER 2005-41**

Unless otherwise specified; all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-41 is effective May 13, 2010.

### **Use of Project Labor Agreements for Federal Construction Projects (FAR Case 2009-005)**

This final rule amends the FAR to implement Executive Order (E. O.) 13502, Use of Project Labor Agreements for Federal Construction projects. The E. O. encourages the use of project labor agreements for Federal construction projects where the total cost to the Government is more than \$25 million in order to promote economy and efficiency in Federal procurement. The rule provides that an agency may, if appropriate, require that every contractor and subcontractor engaged in construction on a construction project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations. The rule identifies factors that agencies may consider to help them decide, on a case-by-case basis, whether the use of a project labor agreement is likely to promote economy and efficiency in the performance of a specific construction project, and multiple strategies for timing the Federal Government's receipt of project labor agreements.

**MARCH 23, 2010**

**NUMBER 2005-40**

Unless otherwise specified; all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-40 is effective April 22, 2010.

### **Federal Awardee Performance and Integrity Information System(FAR Case 2008-027)**

This final rule adopts, with changes, the proposed rule published in the Federal Register on September 3, 2009 (74 FR45579); and amends the FAR to implement section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 872 requires the establishment of a data system, Federal Awardee Performance and Integrity Information System (FAPIIS), containing specific information on the integrity and performance of covered Federal agency contractors and grantees. FAPIIS is available for use in award decisions at [www.ppirs.gov](http://www.ppirs.gov). Government input to FAPIIS is accomplished at [www.cpars.csd.disa.mil](http://www.cpars.csd.disa.mil).

FAPIIS is intended to significantly enhance the scope of information available to contracting officers as they evaluate the integrity and performance of prospective contractors competing for

Federal contracts and to protect taxpayers from doing business with contractors that are not responsible sources. This final rule impacts Government contracting officers and contractors. The Government contracting officers will be required to—

1. Check the FAPIIS website, available at [www.ppirs.gov](http://www.ppirs.gov), before awarding a contract over the simplified acquisition threshold, consider all the information in FAPIIS and PPIRS when making a responsibility determination, and notify the agency official responsible for initiating debarment or suspension action if the information appears appropriate for the official's consideration; and
2. Enter a non-responsibility determination into FAPIIS.

The contractor will be required to:

1. Confirm, at the time of offer submission, information pertaining to criminal, civil and administrative proceedings through which a requisite determination of fault was made, and report this information into FAPIIS; and
2. Update the information in FAPIIS on a semi-annual basis, throughout the life of the contract, by entering the required information into FAPIIS via the Central Contractor Registration database, available at <http://www.ccr.gov>.

**MARCH 19, 2010**

**NUMBER 2005-39**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-39 is effective March 19, 2010, except for Items III, IV, and VI which are effective April 19, 2010.

**Item I—Extend Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2009-035)**

This final rule amends the FAR to implement section 816 of the National Defense Authorization Act for Fiscal Year 2010. The rule extends for two more years the commercial items test program in subpart 13. 5. The program was to expire January 1, 2010.

**Item II—Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (FAR Case 2008-012)**

This final rule adopts, with minor changes, the interim rule published in the Federal Register at 74 FR 11826 on March 19, 2009. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the FAR to harmonize the thresholds for cost or pricing data on non-commercial modifications of commercial items to reflect the Truth In Negotiation Act (TINA) threshold for cost and pricing data.

The Councils are hereby implementing a requirement of the National Defense Authorization Act (NDAA) for FY 2008. Specifically, section 814 of the NDAA requires the harmonization of the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold for cost and pricing data. By linking the threshold for cost or pricing data on

non-commercial modifications of commercial items with the TINA threshold at FAR 15. 403-4, whenever the TINA threshold is adjusted the threshold for cost or pricing data on non-commercial modifications of commercial items will be automatically adjusted as well.

### **Item III—Use of Standard Form 26 – Award/Contract(FAR Case 2008-040)**

This final rule modifies the instructions for use of the Standard Form 26, Award/Contract, at FAR subparts 15. 5 and 53. 2to clarify that block 18 of the form should not be used to award a negotiated procurement. No change is made to existing policy or procedures.

### **Item IV—Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (FAR Case 2008-006)**

This final rule adopts, with changes, the interim rule published in the Federal Register at 73 FR 54008 on September 17, 2008. The FAR subpart 16. 5 is amended to implement section 843of the Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110-181). The provisions of section 843 include (1)Limitation on single award task- or delivery-order contracts greater than \$100 million; (2) Enhanced competition for task and delivery orders in excess of \$5 million; and (3) Protest on orders on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or valued in excess of \$10 million. Several changes are made to the FAR as result of public comments on the interim rule. FAR 16. 503 is amended to clarify that a requirements contract is awarded to one contractor. FAR 16. 504(c)(1)(ii)(D)(3)(ii) is amended to clarify that the head of the agency determination to award a single-source architect-engineer task- or delivery-order contract over \$100 million is not required. The Councils also revised FAR 16. 504(c)(1)(ii)(D)(3) to read that the requirement for a determination for a single award contract greater than \$100million is in addition to any applicable requirements of FAR subpart 6. 3. This change is made to clarify that the determination for a single award task- or delivery-order contract greater than \$100 million is required in addition to the Justification and Approval (J&A) required by FAR subpart 6. 3 when a procurement will be conducted as other than full and open competition.

### **Item V—Trade Agreements—Costa Rica, Oman, and Peru(FAR Case 2008-036)**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to Costa Rica, the United States-Oman Free Trade Agreement, and the United States-Peru Trade Promotion Agreement.

This final rule allows contracting officers to purchase the goods and services of Costa Rica, Oman, and Peru without application of the Buy American Act if the acquisition is subject to the applicable trade agreements. The threshold for supplies and services is \$67, 826 for the CAFTA-DR (Costa Rica) and\$194, 000 for the Oman and Peru free trade agreements (FTAs). The threshold for construction is \$7, 443, 000 for the CAFTA-DR and the Peru FTA and \$8, 817, 449 for the Oman FTA. This rule converts the interim rule to a final rule without change.

**Item VI—Payments Under Fixed-Price Architecture and Engineering Contracts (FAR Case 2008-015)**

This rule amends the clause at FAR 52. 232-10 Payments Under Fixed-Price Architect-Engineer Contracts, to revise and clarify the retainage requirements. The contracting officer can withhold up to 10 percent of the payment due in any billing period when the contracting officer determines that such a withholding is necessary to protect the Government's interest and ensure satisfactory completion of the contract. However, withholding the entire 10 percent is not required, and no withholding is required if the contractor's performance has been satisfactory. The changes clarify that retainage is optional and any amounts retained should not be held over beyond the satisfactory completion of the instant contract.

**Item VII—Technical Amendment**

Editorial change made at FAR 14. 202-4(a)(3).

**DECEMBER 10, 2009**

**NUMBER 2005-38 (CORRECTION)**

In the original issuance of the FAC 2005-38 looseleaf version, Matrix revisions for FAR clause 52. 226-6 were inadvertently omitted. The corrected pages are reissued in this supplement, as well as the original version.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-38 is effective December 10, 2009, except for Items V and VI which are effective January 11, 2010, and Item II which is effective February 1, 2010.

**DECEMBER 10, 2009**

**NUMBER 2005-38**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-38 is effective December 10, 2009, except for Items V and VI which are effective January 11, 2010, and Item II which is effective February 1, 2010.

**Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009-017)**

This final rule amends the FAR to delete FAR subpart 22. 16 and the corresponding FAR clause at 52. 222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order 13201, of February 17, 2001, of the same title. Executive Order 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. Executive Order 13496, of January 30, 2009, Notification of Employee Rights under Federal Labor Laws, revoked Executive Order 13201.

**Item II—Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006-026)**

This final rule amends the FAR at parts 4, 8, 13, 16, 32, and 52 by restricting the use of the Governmentwide commercial purchase card as a method of payment for offerors with debt subject to the Treasury Offset Program (TOP). This final rule facilitates the collection of delinquent debts owed to the Government by requiring contracting officers to determine whether the Central Contractor Registration (CCR) database indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt flag indicator is found in the CCR database, then the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the debt flag indicator at the time of contract award or order issuance or placement. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) deleted the requirement to check CCR for the indicator before exercising an option. Purchases and orders at or below the micro-purchase threshold are exempt from verification in the CCR database as to whether the contractor has a debt flag indicator subject to collection under the TOP.

**Item III—Internet Protocol Version 6 (IPv6) (FAR Case 2005-041)**

This final rule adopts the proposed rule published in the Federal Register at 71 FR 50011, August 24, 2006, as a final rule with minor changes. This final rule amends FAR parts 7, 11, 12, and 39 to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) procurements requiring Internet Protocol (IP).

IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M-05-22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 compliant products and standards. In addition, OMB Memorandum M-05-22 provides guidance to agencies for transitioning to IPv6.

**Item IV—Federal Food Donation Act of 2008 (Pub. L. 110-247) (FAR Case 2008-017)**

This rule adopts as final, with no changes, the interim rule published in the Federal Register at 74 FR 11829 on March 19, 2009. This rule implements the Federal Food Donation Act of 2008 (Pub. L. 110-247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

The contracting officer is required to insert the clause at FAR 52. 226-6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$25, 000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

**Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006-021)**

Currently FAR 31. 205-6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

**Item VI—Travel Costs (FAR Case 2006-024)**

This final rule amends the FAR to change the travel cost principle (FAR 31. 205-46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms “coach or equivalent” and “standard” from the description of the classes of allowable airfares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a “coach” fare may be available, given the great variety of fares often available, the “coach” fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

**Item VIII—Technical Amendments**

This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes at FAR 6. 302-2, 8. 703, 15. 305, 52. 209-6, and 52. 212-5.

**Looseleaf Only Corrections**

Section 52. 232-16 is amended by adding paragraph (j)(5).

**OCTOBER 14, 2009****NUMBER 2005-37**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC2005-37 is effective October 14, 2009, except for Item VII which is effective November 13, 2009.

**Item I—Registry of Disaster Response Contractors(FAR Case 2008-035) (Interim)**

This interim rule amends the Federal Acquisition Regulation at parts 2, 4, 7, 10, 13, 18, 26, and 52 to implement the Registry of Disaster Response Contractors provision, section 697 of the Department of Homeland Security (DHS) Appropriations Act, 2007(6 U. S. C. 796).

The Act requires that the Federal Emergency Management Agency(FEMA) establish and maintain this registry. It also requires that the registry include business information consistent with the data that is currently required in the Central Contractor Registration (CCR) with two additional categories added to reflect the area served by the business, and the bonding level of the business concern. The CCR has been updated to include these changes. In addition, the

FEMA website has been updated with a link to the CCR search feature which provides access to the disaster response registry. Contracting officers will be required to consult this registry during market research and acquisition planning.

### **Item II—Limiting Length of Noncompetitive Contracts in “Unusual and Compelling Urgency” Circumstances (FAR Case 2007-008)**

This final rule amends the Federal Acquisition Regulation to require that contracts awarded under the authority of FAR 6. 302-2, Unusual and compelling urgency, may not exceed the time necessary to meet the unusual and compelling requirements, may not exceed the time for the agency to enter into a another contract for the required goods and services through the use of competitive procedures, and may not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply. The determination may be made after contract award when making the determination prior to award would unnecessarily delay the award. The rule applies to any contract in an amount greater than the simplified acquisition threshold. The rule implements the requirements of section 862 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). The rule is intended to strengthen Federal acquisition competition policies.

### **Item III—GAO Access to Contractor Employees (FAR Case 2008-026)**

This final rule converts the interim rule published in the Federal Register at 74 FR 14649, March 31, 2009, to a final rule without change. The interim rule amended FAR 52. 215-2, Audits and Records—Negotiation, and FAR 52. 214-26, Audit and Records—Sealed Bidding, to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule does not apply to the acquisition of commercial items; therefore, FAR 12. 503 was amended to add the exemption of this rule. This change implemented Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA)(Pub. L. 110-417).

### **Item IV—Use of Commercial Services Item Authority(FAR Case 2008-034) (Interim rule)**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing an interim final rule amending the Federal Acquisition Regulation to implement Section 868 of the Duncan Hunter National Defense Authorization Act (NDAA)for Fiscal Year 2009. Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

### **Item V—Limitations on Pass-Through Charges (FAR Case 2008-031)(Interim)**

This interim rule implements Section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009(Pub. L. 110-417) and Section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109-364). This legislation requires the Councils to amend the Federal Acquisition Regulation to minimize excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (i.e. , pass-through charges)on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, this interim rule includes a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

### **Item VI—Award Fee Language Revision (FAR Case 2008-008) (Interim)**

This final rule amends the Federal Acquisition Regulation(FAR) part 18 to remove all references to the National Response Plan (NRP) and Incidents of National Significance. In January2008, the Federal Emergency Management Agency (FEMA), a component within the Department of Homeland Security, reissued the National Response Plan (NRP) as the National Response Framework (NRF). With the reissuance, the term “Incidents of National Significance “was eliminated. The changes became effective on March 22, 2008. Both the NRP and the term “Incidents of National Significance” are now obsolete.

This rule is informational and represents minor updates for consistency with FEMA references. FEMA provides a link at their website for Frequently Asked Questions that explains the rationale for and the changes to the NRF.

This rule does not have a significant impact on Government or any automated systems.

### **Item VII—National Response Framework (FAR Case 2009-003)**

This final rule amends the Federal Acquisition Regulation(FAR) part 18 to remove all references to the National Response Plan (NRP) and Incidents of National Significance. In January2008, the Federal Emergency Management Agency (FEMA), a component within the Department of Homeland Security, reissued the National Response Plan (NRP) as the National Response Framework (NRF).

With the reissuance, the term “Incidents of National Significance” was eliminated. The changes became effective on March 22, 2009. Both the NRP and the term “Incidents of National Significance” are now obsolete.

This rule is informational and represents minor updates for consistency with FEMA references.

FEMA provides a link at their website for Frequently Asked Questions that explains the rationale for and the changes to the NRF.

This rule does not have a significant impact on Government or any automated systems.

### **Item VIII—Technical Amendments**

This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes at FAR 5. 102, 52. 213-4, and 52. 244-6.

#### **Looseleaf Only Corrections**

1. Section 3. 103-1 is corrected in the introductory paragraph by removing “52. 203-1” and adding “52. 203-2” in its place.

2. Section 52. 227-14 is corrected in Alternate II by removing from the heading after paragraph (g)(3) “Limited Rigths Notice” and adding “Limited Rights Notice” in its place.

3. The Matrix is corrected in the table, entries “52. 216-29” and “52. 216-30” by amending the entries under the heading “UCF” by removing “I” and adding “L” in its place (twice).

**AUGUST 11, 2009**

**NUMBER 2005-36**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-36 is effective August 11, 2009, except for Items I, II, and V, which are effective September 10, 2009.

### **Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2008-038)**

This final rule amends the Federal Acquisition Regulation(FAR) subparts 5. 1, 5. 2, and 7. 1 to remove all references to the Federal Technical Data Solution (FedTeDS) System, and refer to the enhanced capabilities of the Governmentwide Point of Entry (GPE)system. The FedTeDS system was used to post on-line technical data packages and other items associated with solicitations that required some level of access control. It was interfaced directly with the GPE system. In April 2008, the newest version of the GPE was launched. This version incorporated the capabilities of FedTeDS, allowing the FedTeDS system to be retired. This rule will only have a slight impact on government. It will inform and direct both internal and external users to the new system and website. This rule does not have a significant impact on any automated systems.

### **Item II—Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses (FAR Case 2007-021)**

This final rule amends the Federal Acquisition Regulation(FAR) to specifically require the incorporation of FAR clauses52. 222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) and52. 222-44, Fair Labor Standards Act and Service Contract Act-Price Adjustment, in time-and-materials and labor–hour service contracts that are subject to the Service Contract Act.

**Item III—New Designated Country—Taiwan (FAR Case 2009-014) (Interim)**

This interim rule implements in FAR Parts 22, 25, and 52, as appropriate, 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.

**Item IV—Prohibition on Restricted Business Operations in Sudan and Imports from Burma (FAR Case 2008-004)**

This final rule converts the interim rule published in the Federal Register at 73 FR 33636 on June 12, 2008, to a final rule with changes. This final rule implements Section 6 of the Sudan Accountability and Divestment Act of 2007, which requires certification in each contract entered into by an Executive Agency that the contractor does not conduct certain business operations in Sudan. In addition, in accordance with Executive Orders 13310 and 13448, the Councils added Burma to the list of countries from which most imports are prohibited.

**Item V—List of Approved Attorneys, Abstractors, and Title Companies (FAR Case 2006-013)**

This final rule amends Federal Acquisition Regulation (FAR) 28. 203-3 and 52. 228-11 to update the procedures for the acceptance of a bond with a security interest in real property. The FAR has relied on the Department of Justice (DOJ) to provide a “List of Approved Attorneys, Abstractors, and Title Companies”. However, DOJ has discontinued maintenance of the List. Replacing the List, DOJ published “Title Standards 2001”, establishing the evidence requirements for acceptance of title to real property for individual sureties.

The rule also provides that in lieu of evidence of title that is consistent with DOJ standards, that sureties may provide a mortgagee title insurance policy in an insurance amount equal to the amount of the lien.

**Item VI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (FAR Case 2007-002)**

This final rule converts, without change, the interim rule published in the Federal Register at 73 FR 54011 September 17, 2008. No comments were received in response to the interim rule. The interim rule amended the Federal Acquisition Regulation (FAR) to revise FAR 30. 201-4(b)(1) and 52. 230-1 through 52. 230-5 to maintain consistency between the Federal Acquisition Regulation (FAR) and Cost Accounting Standards (CAS) regarding the administration of the CAS Board’s rules, regulations and standards.

Effective June 14, 2007, the CAS Board amended the contract clauses contained in its rules and regulations at 48 CFR 9903. 201-4, pertaining to the administration of CAS, to adjust the CAS applicability threshold in accordance with section 822 of the 2006 National Defense Authorization Act (Pub. L. 109-163). That section amended 41 U. S. C. 422(f)(2)(A) to require that the threshold for CAS applicability be the same as the threshold for compliance with the Truth in Negotiations Act (TINA).

## **Item VII—Technical Amendments**

This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes at sections 32. 503-9, 52. 213-4, and 52. 244-6.

### **Looseleaf Only Corrections**

1. Section 2. 101 in paragraph (b)(2) is amended by removing the definition “Federal Technical Data Solution(FedTeDS)”.
2. Section 52. 301 in the matrix is amended by removing “Yes” in the “IBR” column and adding “No” to paragraphs 52. 216-18, 52. 216-19, 52. 216-21, 52. 216-22, 52. 217-9, 52. 232-19, and 52. 245-2.

**JULY 14, 2009**

**NUMBER 2005-35**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-35 is effective July 14, 2009.

### **Revocation of Executive Order 13202 (FAR Case 2009-015)**

In accordance with Executive Order 13502 - Use of Project Labor Agreements for Federal Construction Projects, this final rule amends FAR 36. 202(d) to delete references to the revoked Executive Order 13202. The E. O. prohibited executive departments and agencies from requiring or prohibiting Federal Government contractors and subcontractors’ entrance into project labor agreements. This rule requires no action on the part of contracting officers.

**JULY 1, 2009**

**NUMBER 2005-34**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-34 are effective July 1, 2009, except for Item III, which is effective July 31, 2009.

Note: The looseleaf updated replacement pages are effective July 15, 2009.

### **Item I—Contractor Performance Information (FAR Case 2006-022)**

This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR Parts 2, 8, 9, 13, 17, 36, 42, and 53. The purpose of this final rule is to ensure that the FAR clearly reflects the use of the Governmentwide performance information repository, Past Performance Information Retrieval System(PPIRS) at <http://www.ppirs.gov>; requires the evaluation of past performance for orders exceeding the simplified acquisition threshold placed against Federal Supply Schedule contracts, or under a task order or delivery order against a contract awarded by another Federal agency (i.e. Governmentwide acquisition contract or multi-agency contract); recommends past performance information for orders under single agency contracts; consolidates the collection of past performance guidance in Part 42; and, clarifies that the Agency shall identify those responsible for preparing interim and final evaluations.

**Item II—Prohibition on Contracting with Inverted Domestic Corporations (FAR Case 2008-009) (Interim)**

This interim rule implements Section 743 of Division D of the Omnibus Appropriations Act, 2009 (Public Law 111-8), which prohibits the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one. The interim rule addresses solicitations issued after the date of publication using funds appropriated in Fiscal Years 2006, 2007, and 2008, as well.

**Item III—Role of Interagency Committee on Debarment and Suspension (FAR Case 2008-028)**

This final rule amends Federal Acquisition Regulation Subpart 9.4 to clarify the role of the Interagency Committee on Debarment and Suspension when more than one agency has an interest in the debarment or suspension of a contractor. Among other responsibilities, the Interagency Committee on Debarment and Suspension is authorized to resolve issues regarding the agency that will have lead responsibility in initiating a suspension or debarment proceeding. The Committee will also coordinate actions among interested agencies with respect to such action. This rule is facilitated as a result of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Section 873(a)(1) and (2).

Looseleaf updated replacement pages Due to FAC 2005-34 changes, we are replacing pages that were previously issued with FAC 2005-33.

**JUNE 15, 2009**

**NUMBER 2005-33**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-33 are effective June 15, 2009, except for Item II, which is effective July 15, 2009.

**Item I—Trade Agreements—Costa Rica, Oman, and Peru(FAR Case 2008-036) (Interim)**

This interim rule allows contracting officers to purchase the goods and services of Costa Rica, Oman, and Peru without application of the Buy American Act if the acquisition is subject to the applicable trade agreements. The free trade agreements with Costa Rica, Oman, and Peru join the North American Free Trade Agreement (NAFTA), the Australia, Bahrain, Chile, Morocco, and Singapore Free Trade Agreements, and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with respect to the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, which are already in the FAR.

The threshold for supplies and services is \$67, 826 for the CAFTA-DR and \$194, 000 for the Oman and Peru FTAs. The threshold for construction is \$7, 443, 000 for the CAFTA-DR and the Peru FTA and \$8, 817, 449 for the Oman FTA.

**Item II—Contractor’s Request for Progress Payments(FAR Case 2005-032)**

This final rule converts the proposed rule published at 73 FR 19035 on April 8, 2008, to a final rule with one editorial change. This final rule incorporates improvements related to requests for

progress payments and the Standard Form (SF) 1443, Contractor's Request for Progress Payments, used to request those progress payments.

### **Looseleaf Only Corrections**

Section 36. 203 is amended by removing paragraph (b), and redesignating paragraphs (c) and (d) as (b) and (c), respectively.

**MAY 14, 2009**

**NUMBER 2005-32, TECHNICAL AMENDMENTS**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-32, Technical Amendments, is effective May 14, 2009.

This document makes amendments to the Federal Acquisition Regulation (FAR), Federal Acquisition Circular (FAC) 2005-32, published in the Federal Register at 74 FR 14622-14652, on March 31, 2009, in order to make editorial and correcting changes.

**MARCH 31, 2009**

**NUMBER 2005-32**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-32 are effective March 31, 2009.

### **Item I—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim) (FAR Case 2009-008)**

This interim rule implements the Buy American provision, section 1605, of the American Recovery and Reinvestment Act of 2009. It prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. However, section 1605 requires that the Buy American requirement be applied in a manner consistent with U. S. obligations under international agreements. Moreover, because Congress intended that least developed countries be excepted from section 1605, least developed countries can continue to be treated as designated countries. Section 1605 also provides for waivers under certain limited circumstances.

### **Item II—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim) (FAR Case 2009-012)**

Subpart 3. 9 of the Federal Acquisition Regulation (FAR) is revised to add section 3. 907. Section 3. 907 provides procedures for whistleblower protection, when using funds appropriated or otherwise provided by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

Section 3. 907 provides that non-Federal employers are prohibited from discharging, demoting, or discriminating against employees as a reprisal for disclosing certain covered information to certain categories of Government officials. This section further provides definitions relevant to the statute; establishes time periods within which the Inspector General and the agency head must take action with regard to a complaint filed by a contractor employee; establishes

procedures for access to investigative files of the Inspector General; and provides for remedies and enforcement authority.

A new clause 52. 203-15 is added to require contractors to post rights and remedies for whistleblower protections under Section 1553 of the American Recovery and Reinvestment Act.

**Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (Interim) (FAR Case 2009-010)**

This interim rule implements the Office of Management and Budget's Guidance, M-09-10, "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," dated February 18, 2009, section 6. 2. Federal Acquisition Regulation (FAR) Part 4 requires the contracting officer to enter data in the Federal Procurement Data System on any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), in accordance with the instructions at <https://www.fpds.gov>. Subpart 5. 7 is added to direct the contracting officer to use the Governmentwide Point of Entry (<https://www.fedbizopps.gov>) to 1) identify the action as funded by the Recovery Act; 2) post pre-award notices for orders exceeding \$25,000 for "informational purposes only;" 3) describe supplies and services (including construction) in a narrative that is clear and unambiguous to the general public; and 4) provide a rationale for awarding any action, including modifications and orders, that is not both fixed-price and competitive, and include the rationale for using other than a fixed-price and/or competitive approach. Parts 8, 13, and 16 are amended to reflect the new posting requirements for orders at Subpart 5. 7.

**Item IV—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements (Interim) (FAR Case 2009-009)**

This interim rule implements section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds. The rule adds a new subpart 4. 15, and a new clause, 52. 204-11. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This clause applies to Commercial item contracts and Commercially-Available-Off-The-Shelf (COTS) item contracts as well as actions under the Simplified Acquisition Threshold.

Contracting officers who wish to use Recovery Act funds on existing contracts should modify those contracts to add the clause.

Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

**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 Sections 902, 1514, and 1515 of the American Recovery and 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.

These Recovery Act provisions are implemented in new alternate clauses to 52. 212-5, “Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items”, 52-214-26, “Audit and Records—Sealed Bidding, ” and 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.

#### **Item VI—GAO Access to Contractor Employees (Interim)(FAR Case 2008-026)**

This interim rule amends the Federal Acquisition Regulation(FAR) Parts 12 and 52. Clauses 52. 215-2, Audit and Records-Negotiation and 52. 214-26, Audit and Records-Sealed Bidding are being modified to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule will not apply to the acquisition of commercial items; therefore, FAR 12. 503 will be amended to add the exemption of this rule. This change implements Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110-417).

**MARCH 19, 2009**

**NUMBER 2005-31 (LOOSELEAF CORRECTION)**

Since the original issuance of the FAC 2005-31 looseleaf version, the FAC 2005-32 looseleaf version was issued. Subsequently, replacement looseleaf pages must now be issued. The replacement pages are reissued in this looseleaf correction.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-31 are effective March 19, 2009, except for Items I and III which are effective April 20, 2009.

**MARCH 19, 2009**

**NUMBER 2005-31**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-31 are effective March 19, 2009, except for Items I and III which are effective April 20, 2009.

#### **Item I—Small Business Size Rerepresentation (FAR Case 2006-032)**

This rule amends the Federal Acquisition Regulation (FAR) to adopt as final, with changes, an interim FAR rule published in the Federal Register at 72 FR 36852, July 5, 2007, amending the FAR to implement the Small Business Administration’s (SBA)final rule published on November 15, 2006 (71 FR 66434), entitled Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations. The purpose of the SBA rule and this FAR rule is to improve the accuracy of

small business size status reporting, at the prime contract level, over the life of certain contracts (long-term contracts, novations, acquisitions, and mergers). Contractors are required to represent their size status prior to the end of the fifth year of a contract that is more than five years in duration (long-term contract); prior to exercising any option thereafter; following execution of a novation agreement on any contract; or following a merger or acquisition, regardless of whether there is a novation agreement. A change in the size status does not change the terms and conditions of the contract, but the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements.

### **Item II—Clarification of Submission of Costs or Pricing Data on Non-Commercial Modifications of Commercial Items (FAR Case 2008-012) (Interim)**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim final rule amending the Federal Acquisition Regulation (FAR) to harmonize the thresholds for cost or pricing data on non-commercial modifications of commercial items to reflect the Truth In Negotiation Act (TINA) threshold for cost and pricing data. The Councils are hereby implementing a requirement of the National Defense Authorization Act (NDAA) for FY 2008. Specifically, Section 814 of the Act requires the harmonization of the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold for cost and pricing data. By linking the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold at FAR 15. 403-4, whenever the TINA threshold is adjusted the threshold for cost or pricing data on non-commercial modifications of commercial items will be automatically adjusted as well.

### **Item III—Amendments to Incorporate New Wage Determinations (FAR Case 2008-014)**

The final rule amends the Federal Acquisition (FAR) to correct an inconsistency between FAR 15. 206(c) and 22. 404-5(c)(3), by revising the language at 22. 404-5(c). This change requires the contracting officer to amend solicitations to incorporate new Davis Bacon wage determinations (WD) and furnish the wage rate information only to all offerors that have not been eliminated from the competition, if the closing date for receipt of offers has already passed. The revision is necessary to ensure consistency with FAR 15. 206(c), and eliminate a possible scenario where incorporation of an updated WD into the solicitation process, could cause an unnecessary and counterproductive reevaluation of proposals already eliminated from competition. This change is consistent with the intent of the Department of Labor regulations, ensuring that the most current WD is placed in the contract at the time of award for compliance at the start of contract performance.

### **Item IV—Least Developed Countries that are Designated Countries (FAR Case 2008-021)**

This final rule amends the Federal Acquisition Regulation (FAR) to revise the definition of designated country, adding Liberia and removing Cape Verde. Least Developed Countries form a subset of designated countries. The list of Least Developed Countries is derived from a United Nations list of Least Developed Countries. The United States Trade Representative has updated the list of Least Developed Countries that are treated as designated countries. In acquisitions that

are covered by the World Trade Organization Government Procurement Agreement, contracting officers must acquire only U. S. -made or designated country end products, or U. S. or designated-country services, unless offers of such end products or services are not received or are insufficient to fulfill the requirement (FAR 25. 403(c)).

**Item V—Federal Food Donation Act of 2008 (Pub. L. 110-247) (FAR Case 2008-017) (Interim)**

This interim rule amends the Federal Acquisition Regulation(FAR) Parts 26, 31, and 52 to encourage executive agencies and their contractors to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. This change implements the Federal Food Donation Act of 2008 (Pub. L. 110-247) which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food to encourage the contractors, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. The rule is effective for all solicitations and contracts greater than \$25, 000 for the provision, service, or sale of food in the United States issued on or after the effective date of the rule.

**Item VI—Technical Amendments**

Editorial changes are made at FAR 3. 503-2, 47. 103-1, and 52. 213-4.

**Looseleaf Only Corrections**

1. Section 13. 105 is amended by revising paragraph (a).
2. Section 52. 213-4 is amended by revising paragraph (b)(1)(vi).

**JANUARY 15, 2009**

**NUMBER 2005-30 (LOOSELEAF CORRECTION)**

In the original issuance of the FAC 2005-30 looseleaf version, inadvertently, incorrect pages were included. The corrected pages are reissued in this looseleaf correction.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-30 are effective January 15, 2009, except for Items I, II, III, IV, V, VI, and VII which are effective February 17, 2009.

**JANUARY 15, 2009**

**NUMBER 2005-30**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-30 are effective January 15, 2009, except for Items I, II, III, IV, V, VI, and VII which are effective February 17, 2009.

**Item I—Federal Procurement Data System (FPDS)(FAR Case 2004-038)**

This final rule amends the Federal Acquisition Regulation(FAR) Subpart 4. 6 to revise the process for reporting contract actions to the Federal Procurement Data System (FPDS). The rule

establishes FPDS as the single authoritative source of all procurement data for a host of applications and reports, such as the Central Contractor Registration (CCR), the Electronic Subcontracting Reporting System (eSRS), the Small Business Goaling Report (SRGR), and Resource Conservation and Recovery Act (RCRA) data. The rule requires Contracting Officers to verify the accuracy of contract award data prior to reporting the data in FPDS. The rule does not require any reporting by the vendor community, as the FPDS reporting requirement is accomplished by Government contracting activities.

### **Item II—Commercially Available Off-the-Shelf (COTS) Items(FAR Case 2000-305)**

This final rule amends the Federal Acquisition Regulation(FAR) to implement Section 4203 of the Clinger-Cohen Act of 1996 (41 U. S. C. 431) with respect to the inapplicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf (COTS) items. A new FAR section 12. 103 outlines the treatment of COTS items. This rule will reduce the burden on contractors that provide commercially available off-the-shelf EPA-designated products that contain recovered materials and contractors that provide construction material or end products that are COTS items manufactured in the United States. Contracting officers will need to become acquainted with the new definition of “commercially available off-the-shelf item” and understand the revised definitions of “domestic end product” and “domestic construction material.”

### **Item III—Exemption of Certain Service Contracts from the Service Contract Act (SCA). (FAR Case 2001-004)**

This rule finalizes, with changes, the interim rule that was published in the Federal Register at 72 FR 63076 on November 7, 2007. This rule is required to implement the U. S. Department of Labor’s final rule published in the Federal Register at 66 FR 5327 on January 18, 2001, amending 29 CFR Part 4. This rule revises the current Service Contract Act (SCA) exemption in the FAR and adds an SCA exemption for contracts for certain additional services that meet specific criteria. The rule also adds to the Annual Representations and Certifications FAR clause at 52. 204-8, the conditions under which each listed provision applies, or for the more complex cases, a check-off for the contracting officer to indicate whether the provision is applicable to the solicitation. The rule encourages broader participation of Government procurement by companies doing business in the commercial sector, and reinforces the Government’s commitment to reduce Government-unique terms and conditions, without compromising the purpose of the SCA to protect prevailing labor standards.

### **Item IV— Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts-Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (Interim) (FAR Case 2008-003)**

This interim rule amends FAR 6. 305 to require agencies to make available for public inspection within 14 days after contract award the justification required by 6. 303-1, on the website of the agency and at the Governmentwide Point of Entry([www.fedbizopps.gov](http://www.fedbizopps.gov)). In the case of a contract award permitted under FAR 6. 302-2, the rule requires that the justification be posted within 30 days after contract award. The rule requires that contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such

references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. This rule implements Section 844 of the National Defense Authorization Act for Fiscal Year 2008.

#### **Item V—SAFETY Act: Implementation of DHS Regulations(FAR Case 2006-023)**

This final rule converts the interim rule published in the Federal Register at 72 FR 63027, November 7, 2007 to a final rule with changes. This final rule implements the SAFETY Act in the FAR. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the SAFETY Act is to ensure that the threat of liability does not deter potential manufacturers or sellers of antiterrorism technologies from developing, deploying, and commercializing technologies that could save lives. Examples of Qualified Anti-Terrorism Technologies (QATT) identified by DHS include—

- Vulnerability assessment and countermeasure and counter-terrorism planning tools;
- First responder interoperability solution;
- Marine traffic management system;
- Security services, guidelines, systems, and standards;
- Vehicle and cargo inspection system;
- X-ray inspection system;
- Trace explosives detection systems and associated support services;
- Maintenance and repair of screening equipment;
- Risk assessment platform;
- Explosive and weapon detection equipment and services;
- Biological detection and filtration systems;
- Passenger screening services;
- Baggage screening services;
- Chemical, biological, or radiological agent release detectors;
- Vehicle barriers;
- First responder equipment; and
- Architectural and engineering “hardening” products and services.

#### **Item VI—Electronic Products Environmental Assessment Tool (EPEAT) (FAR Case 2006-030)**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, the interim rule that amended the Federal Acquisition Regulation (FAR) to require use of the Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops,

notebooks (also known as laptops), and monitors pursuant to the Energy Policy Act of 2005 and Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.” The interim rule revised Subpart 23.7, and prescribed a clause at 52.223-16 (also included in 52.212-5 for acquisition of commercial items) in all solicitations and contracts for the acquisition of personal computer products, services that require furnishing of personal computer products for use by the Government, and services for contractor operation of Government owned facilities.

### **Item VII—Combating Trafficking in Persons (FAR Case 2005-012)**

This final rule implements Section 3(b) of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 (Combating Trafficking In Persons). TVPRA addresses the victimization of countless men, women, and children in the United States and abroad. The United States Government believes that its contractors can help combat trafficking in persons. The statute, codified at 22 U. S. C. 7104(g), requires that contracts contain a clause allowing the agency to terminate the contract if a contractor, contractor employees, subcontractor, or subcontractor employees engage in severe forms of trafficking in persons or procures a commercial sex act during the period of performance of the contract, or uses forced labor in the performance of the contract. The rule provides that the contracting officer may consider whether the contractor had a Trafficking in Persons awareness program at the time of a violation as a mitigating factor when determining remedies; and a website where the contractor may obtain additional information about Trafficking in Persons and examples of awareness programs.

### **Item VIII—Trade Agreements—New Thresholds (FAR Case 2007-016)**

This final rule converts the interim rule published in the Federal Register at 73 FR 10962 on February 28, 2008, and amended at 73 FR 16747 on March 28, 2008, to a final rule without change.

The rule adjusts 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 a formula set forth in the agreements.

### **Item IX—Technical Amendment**

Section 15.101-2 is amended by removing from paragraph (b)(1) “15.304(c)(3)(iv)” and adding “15.304(c)(3)(iii)” in its place.

### **Looseleaf Only Corrections**

1. Section 1.109(a) is amended by correcting the word “periodically” in the first sentence.
2. The Matrix is amended in the table, entry “52.237-11” by revising the entries under the headings “FP R&D” and “CR R&D” and “A&E” by removing “A”.

**JANUARY 14, 2009**

**NUMBER 2005-29, AMENDMENT-1**

The Federal Acquisition Regulation (FAR) contained in FAC2005-29 is effective January 19, 2009, and applicable February 20, 2009.

**Employment Eligibility Verification (FAR Case 2007-013)**

The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have agreed to delay the effective and applicability dates of FAR Case 2007-013, Employment Eligibility Verification, to January 19, 2009, and February 20, 2009, respectively.

**NOVEMBER 14, 2008**

**NUMBER 2005-29**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-29 is effective January 15, 2009.

**Employment Eligibility Verification (FAR Case 2007-013)**

This final rule implements Executive Order 12989, as amended June 6, 2008, and the selection of the Secretary for Homeland Security of the E-Verify system as the electronic system to be used for certain contractors and subcontractors as the means of verifying that certain of their employees are eligible to work in the United States. This final rule inserts a clause into Federal contracts that are above the simplified acquisition threshold and have a performance period of at least 120 days, committing Government contractors to use the U. S. Citizenship and Immigration Services' E-Verify System to verify that all of the contractors' new hires, and all employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States.

Exemptions include contracts that are for commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications. The final rule requires prime contractors to include the clause in subcontracts over \$3, 000 for services or for construction.

In exceptional circumstances, a head of the contracting activity, without power of redelegation, is authorized to waive the requirement to include the clause.

In response to public comments, the final rule significantly extends the timelines for registering, beginning to use the system for new and existing employees, and using the program to initiate verification of new hires.

Applicability to certain entities was limited in the following ways:

- Institutions of higher education need only verify employees assigned to a covered Federal contract.
- State and local governments and Federally Recognized Indian Tribes need only verify employees assigned to a covered Federal contract.

- Sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond need only verify employees assigned to the covered Federal contract.

In addition, the final rule exempts from verification requirements (a) employees who hold an active security clearance of confidential, secret, or top secret and (b) employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12. Contractors concerned with costs associated with identifying and separating existing employees assigned to a Federal contract, for the purpose of E-Verify, are provided the option of verifying all employees of the contractor, including any existing employees not currently assigned to a Government contract.

**NOVEMBER 12, 2008**

**NUMBER 2005-28**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-28 are effective December 12, 2008.

**Item I—Contractor Business Ethics Compliance Program and Disclosure Requirements (FAR Case 2007-006)**

This final rule amends the Federal Acquisition Regulation (FAR) to amplify the requirements for a contractor code of business ethics and conduct, an internal control system, and disclosure to the Government of certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments. The rule provides for the suspension or debarment of a contractor for knowing failure by a principal to timely disclose, in writing, to the agency Office of the Inspector General, with a copy to the contracting officer, certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments. The final rule implements “The Close the Contractor Fraud Loophole Act,” Pub. L. 110-252, Title VI, Chapter 1. The statute defines a covered contract to mean “any contract in an amount greater than \$5, 000, 000 and more than 120 days in duration.” The final rule also provides that the contractor’s Internal Control System shall be established within 90 days after contract award, unless the Contracting Officer establishes a longer time period (See FAR 52. 203-13(c)). The internal control system is not required for small businesses or commercial item contracts.

**SEPTEMBER 17, 2008**

**NUMBER 2005-27**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-27 are effective September 17, except for Items I, II, III, IV, V, VI, XI, and XII which are effective October 17, 2008.

Federal Acquisition Circular (FAC) 2005-27 amends the Federal Acquisition Regulation (FAR) as specified below:

**Item I—Correcting Statutory References Related to the Higher Education Act of 1965 (FAR Case 2007-020)**

This final rule amends the Federal Acquisition Regulation to reflect the correct public law citations for the definition of minority institution. The citations changed when the Higher Education Act of 1965 was amended by the Higher Education Amendments of 1998.

**Item II—Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD (FAR Case 2008-001)**

This final rule amends the Federal Acquisition Regulation to change the name of the “Office of Small and Disadvantaged Business Utilization” to the “Office of Small Business Programs” for the Department of Defense. Section 904 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, re-designated the “Office of Small and Disadvantaged Business Utilization”.

**Item III—Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name (FAR Case 2007-015)**

This final rule amends the language in the Federal Acquisition Regulation to increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies and also changes the name of the JWOD Program to the Ability One Program. These changes are administrative in nature and any impact will be minimal.

**Item IV—Local Community Recovery Act of 2006(FAR Case 2006-014)**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have adopted as final, with a minor change to the second interim rule, two interim rules amending the Federal Acquisition Regulation (FAR) to implement amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The first interim rule was published in the Federal Register at 71 FR 44546, August 4, 2006. The second interim rule was published in the Federal Register at 72 FR 63084, November 7, 2007.

**Item V—Additional Requirements for Competition Advocate Annual Reports (FAR Case 2007-007)**

This final rule amends the Federal Acquisition Regulation 6. 502 to require that annual reviews by executive agency competition advocates be provided in writing to both the agency senior procurement executive and the agency chief acquisition officer, and ensure task and delivery orders over \$1, 000, 000 issued under multiple award contracts are properly planned, issued, and comply with 8. 405 and 16. 505. The rule provides for one of several initiatives by the Administrator, Office of Federal Procurement Policy, to reinforce the use of competition and related practices for achieving a competitive environment. The rule reinvigorates the role of agencies’ competition advocates, strengthens agencies’ competition practices, and ensures best value for the taxpayer.

**Item VI—Contract Debts (FAR Case 2005-018)**

This final rule amends and reorganizes FAR Subpart 32. 6, Contract Debts, and amends associated other FAR coverage, based on the recommendations of the Department of Defense Contract Debt Integrated Process Team, to improve contract debt controls and procedures and to ensure consistency within and between existing regulations. FAR Subpart 32. 6 prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable). Throughout, the term “responsible official” has been replaced with the specific individual/organization responsible for fulfilling the FAR requirement. FAR 32.

601 is revised to specify what constitutes a contract debt, rather than how a contract debt may arise. All discussions of contract debt determinations are consolidated in FAR 32. 603, including the responsibility of the contracting officer in making debt determinations. All discussions of the demand for payment are consolidated in FAR 32. 604, including the requirements for demand letters. All discussions of final decisions are consolidated in FAR 32. 605. FAR 32. 606 includes all coverage on debt collections, including when responsibility should be transferred to the Department of Treasury. All discussions of interest are consolidated at FAR 32. 608, including how to compute interest. The Government's right to make a demand for payment and start the interest clock running under the contract is ensured, as is the Government's right to make a demand for payment without first issuing a final decision of the contracting officer. A final decision is required only if the contractor disagrees with the demand for payment.

#### **Item VII—Subcontractor Requests for Bonds (FAR Case 2007-022)**

This final rule amends the list of laws inapplicable to commercial items, to clarify that the existing regulations at FAR 28. 106-4, Contract clause, and 52. 228-12, Prospective Subcontractor Requests for Bonds, do not apply to commercial items. Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 will be included in the list at FAR 12. 503(a) and 12. 504(a).

#### **Item VIII—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items(FAR Case 2008-002)**

This final rule amends the Federal Acquisition Regulation to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 822 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (division D of Pub. L. 104-106; 110 Stat. 652; 10 U. S. C. 2304 note) by extending until January 1, 2010, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5, 500, 000 (\$11 million for acquisitions as described in 13. 500(e)).

#### **Item IX—Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (FAR Case 2008-006) (Interim)**

This interim rule amends Federal Acquisition Regulation Subpart 16. 5 to implement Section 843 of the Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110-181). The provisions of Section 843 include: (1) Limitation on single award task or delivery order (Indefinite-Delivery Requirements, and Indefinite-Quantity) type contracts greater than \$100 million;

(2) Enhanced competition for task and delivery orders in excess of \$5 million; and (3) Protest on orders on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or valued in excess of \$10million. FAR sections 16. 503 and 16. 504, as amended by this rule, are applicable to single award task or delivery order contracts awarded on or after May 27, 2008. FAR section 16. 505, as amended by this rule, is applicable to orders awarded on or after May 27, 2008 on existing contracts as well as new contracts.

**Item X—Online Representations and Certifications Application Review (FAR Case 2006-025)**

This final rule adopts as final, without change, the interim rule published in the Federal Register at 72 FR 46359, August 17, 2007. The rule amends FAR 23. 406 and 23. 906 to revise the prescriptions for the use of 52. 223-9 and 52. 223-14 to provide for their use under the same circumstances as the prescription for use of their associated provisions. These revisions ensure compliance with the requirements of 40 CFR part 247 and 42 U. S. C. 11023.

**Item XI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses(FAR Case 2007-002) (Interim)**

The subject case is revising the Federal Acquisition Regulation (FAR) clauses concerning the administration of Cost Accounting Standards (CAS) to maintain consistency between the CAS rules and the FAR.

**Item XII—CAS Administration (FAR Case 2006-004)**

This final rule adopts, with minor changes, the proposed rule published in the Federal Register at 71 FR 58338, October 3, 2006, amending the Federal Acquisition Regulation to implement revisions to the regulations related to the administration of the Cost Accounting Standards as they pertain to contracts with foreign concerns, including United Kingdom concerns.

**Item XIII—Accepting and Dispensing of \$1 Coin(FAR Case 2006-027)**

This final rule adopts, with change, the interim rule published in the Federal Register at 72 FR 46361, August 17, 2007. This final rule implements the Presidential \$1 Coin Act of 2005 (Pub. L. 109-145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of the Presidents of the United States in the order of their service and to continue to mint and issue “Sacagawea-design” coins for circulation. In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises. Pub. L. 110-147 was enacted to amend Section 5112(p)(1)(A) of Title 31, United States Code, to allow an exception from the \$1 coin dispensing capability requirement for those vending machines that do not receive currency denominations greater than \$1. Contracting officers have been instructed in the Applicability Date of the preamble to modify contracts upon request of the contractor, to change the older version of the clause to the newer version without requiring consideration from the contractor.

**Item XIV—Technical Amendments**

Editorial changes are made at FAR 15. 404-1 and 52. 212-5.

**JUNE 12, 2008**

**NUMBER 2005-26**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-26 is effective June 12, 2008.

**Item I—Prohibition on Restricted Business Operations in Sudan and Imports from Burma (FAR Case 2008-004) (Interim)**

This interim rule amends the Federal Acquisition Regulation(FAR) Subparts 4. 12, 15. 1, 25. 7, 25. 11, and Part 52 to implement Section 6 of the Sudan Accountability and Divestment Act of 2007, and Executive Orders 13310 and 13448. Section 6 requires certification that the contractor does not conduct certain business operations in Sudan. This case also updates the list of countries from which most imports are prohibited, to reflect Burma as well as Sudan.

**APRIL 22, 2008**

**NUMBER 2005-25**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-25 are effective April 22, 2008, except for Items IV, V, and VI which are effective May 22, 2008.

**Item I—Federal Procurement Data System Reporting(FAR Case 2004-038) (Interim)**

This interim rule amends the Federal Acquisition Regulation(FAR) Subpart 4. 6 to revise the process for reporting contract actions to the Federal Procurement Data System (FPDS). The rule will allow agencies to obtain Federal procurement reports as well as several workload reports designed specifically for first-line supervisors through FPDS. The use of the Federal reports will alleviate the need for individual agencies to collect, verify, and distribute statistics for a host of requirements such as the Small Business Goaling Report (SBGR), the Performance-Based Acquisition (PBA) report, the Central Contractor Registration(CCR), and the Resource Conservation and Recovery Act (RCRA)Report. The rule provides questions and answers to facilitate the public's understanding of the changes proposed in the interim for reporting contract actions under FAR Subpart 4. 6.

**Item II—Electronic Subcontracting Reporting System (eSRS)(FAR Case 2005-040) (Interim)**

This interim rule amends the Federal Acquisition Regulation to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report. The eSRS is a web-based system managed by the Integrated Acquisition Environment. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

**Item III—Revisions to the Defense Priorities and Allocations System (DPAS) (FAR Case 2006-033)**

This final rule amends the language in the Federal Acquisition Regulation (FAR) to reflect the President's delegation of the Defense Production Act's priorities and allocations authorities in Executive Order 12919, and the current provisions of the Defense Priorities and Allocations System (DPAS) regulations of the Department of Commerce outlined in 15CFR Part 700.

FAR changes incorporated in parts 2, 11, 18, 52, and 53 benefit both the Government and industry in the receiving of timely and proper delivery of industrial resources. Contracting officers should take notice of the changes in the FAR especially the changes to the Standard Form (SF) 26, Award/Contract and SF1447, Solicitation/Contract, and use the revised SF 26 and SF1447 that reflects the 15 CFR 700 citation and 2007 date change.

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements.

**Item IV—Use of Products Containing Recovered Materials in Service and Construction Contracts (FAR Case 2005-039)**

This final rule amends the Federal Acquisition Regulation (FAR) to clarify language within the FAR regarding the use of products containing recovered materials, pursuant to the Resource Conservation and Recovery Act of 1976, and Executive Order 13101 "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition." The rule also prescribes a new clause for use in service or construction contracts, to ensure that contractors deliver and make maximum use of products containing recovered material.

**Item V—Representations and Certifications - Tax Delinquencies (FAR Case 2006-011)**

This final rule amends the Federal Acquisition Regulation (FAR) to add conditions regarding refusal to pay delinquent Federal taxes to standards of contractor responsibility, causes for suspension and debarment, and the certifications regarding debarment, suspension, and proposed debarment. The changes are intended to add clarity regarding the specific circumstances under which tax delinquencies are so serious that suspension or debarment should be considered. The changes originated in response to a request from the Senate Permanent Subcommittee on Investigations.

**Item VI—Enhanced Access for Small Business (FAR Case 2006-031)**

This final rule creates a different, higher dollar ceiling enabling small businesses to use the small claims procedure for appealing a contracting officer's final decision. Section 857 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) changed the ceiling under the Contract Disputes Act from \$50,000 or less to \$150,000 or less for small businesses. The ceiling remains at \$50,000 or less for other types of businesses. The change to 41 U. S. C. 608 is a ceiling change only.

## **Item VII—Technical Amendment**

An editorial change is made at FAR 1. 603-1.

**FEBRUARY 28, 2008**

**NUMBER 2005-24**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-24 are effective February 28, 2008, except for Items I, II, V, and VI which are effective March 31, 2008.

**Item I—Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission (FAR Case 2005-011)**

This final FAR rule addresses the issues of contractor personnel that are providing support to the mission of the United States Government in a designated operational area or supporting a diplomatic or consular mission outside the United States, but are not authorized to accompany the U. S. Armed Forces. This final FAR rule clarifies that contractor personnel are only authorized to use deadly force in self-defense or in the performance of security functions, when use of such force reasonably appears necessary to execute their security mission. The purpose and effect of the rule is to relieve the perceived burden on contractors operating without consistent guidance or a standardized clause in a contingency operation or otherwise risky environment.

**Item II—Numbered Notes for Synopses (FAR Case 2006-016)**

This final rule amends the Federal Acquisition Regulation(FAR) to update and clarify policy for synopses of proposed contract actions and to delete all references to Numbered Notes (Notes) in the FAR and Federal Business Opportunities (FedBizOpps)electronic publication. The prescriptions for Numbered Notes were deleted from the FAR in a former FAR case and transitioned from the Commerce Business Daily to FedBizOpps actions. This transition resulted in other synopses-related changes that were not captured in the associated FAR language revision. Additionally, the transition to the electronic FedBizOpps publication for solicitation and other announcements rendered these Notes obsolete or outdated.

**Item III—Trade Agreements – New Thresholds (FAR Case 2007-016)(Interim)**

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements.

**Item IV—New Designated Countries—Dominican Republic, Bulgaria, and Romania (FAR Case 2006-028)**

This final rule converts, without change, the interim rule published in the Federal Register at 72 FR 46357, August 17, 2007. No comments were received in response to the interim rule. The effective date of the rule was August 17, 2007. The interim rule allowed contracting officers to purchase the goods and services of the Dominican Republic without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The threshold for

applicability of the Dominican Republic—Central America-United States Free Trade Agreement is \$67, 826 for supplies and services(the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and \$7, 443, 000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). The interim rule also added Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries wherever it appears.

**Item V—FAR Part 30—CAS Administration (FAR Case 2005-027)**

This final rule amending the Federal Acquisition Regulation(FAR) to implement revisions to the regulations related to the administration of the Cost Accounting Standards (CAS). Among other changes, the final rule streamlines the process for submitting, negotiating, and resolving cost impacts resulting from a change in cost accounting practice or noncompliance with stated practices.

**Item VI—Common Security Configurations (FAR Case 2007-004)**

This final rule amends the Federal Acquisition Regulation to require agencies to include common security configurations in new information technology acquisitions, as appropriate. The revision reduces risks associated with security threats and vulnerabilities and will ensure public confidence in the confidentiality, integrity, and availability of Government information. This final rule requires agency contracting officers to consult with the requiring official to ensure the proper standards are incorporated in their requirements.

**DECEMBER 26, 2007**

**NUMBER 2005-23**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-23 is effective December 26, 2007, except for Item III, which is effective January 25, 2008.

**Item I—Electronic Products Environmental Assessment Tool (EPEAT) (FAR Case 2006-030) (Interim)**

This interim rule amends the Federal Acquisition Regulation (FAR) to require use of the Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors pursuant to the Energy Policy Act of 2005 and Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.” The interim rule revises Subpart 23. 7, and prescribes a new clause in 52. 223 (also included in 52. 212-5 for acquisition of commercial items) in all solicitations and contracts for the acquisition of personal computer products, services that require furnishing of personal computer products for use by the Government, and services for contractor operation of Government-owned facilities.

**Item II—Contracts with Religious Entities (FAR Case 2006-019)**

This final rule adopts as final, without change, the interim rule published in the Federal Register on March 22, 2007. The interim rule amended the Federal Acquisition Regulation (FAR) Parts 22 and 52 to implement Executive Order (E. O.) 11246, as amended, Equal Employment

Opportunity, to incorporate the exemption for religious entities prescribed in E. O. 13279. Section 4 of E. O. 13279 amended Section 204 of E. O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. E. O. 11246, as amended, permits religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities are not exempt from other requirements of the executive order.

**Item III—Performance-Based Payments (FAR Case 2005-016)**

This final rule amends the Federal Acquisition Regulation to increase the use of performance-based payments as the method of contract financing on Federal Government contracts, and improve the efficiency of performance-based payments when used on these contracts. These changes originated from recommendations submitted by the Department of Defense Performance-Based Payments Working Group in their March 8, 2005 report.

**Looseleaf Only Corrections**

Various looseleaf pages are reissued to correct headers, footers, and reflow of text.

**NOVEMBER 23, 2007**

**NUMBER 2005-22**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-22 are effective December 24, 2007.

**Item I—Implementation of Section 104 of the Energy Policy Act of 2005 (FAR Case 2006-008)**

This final rule implements Section 104 of the Energy Policy Act of 2005. Section 104 requires that all acquisitions of energy consuming-products and all contracts that involve the furnishing of energy-consuming products require acquisition of ENERGY STAR® or Federal Energy Management Program (FEMP)designated products. The final rule provides a clause for the Contracting Officer to insert in solicitations and contracts to ensure that suppliers and service and construction contractors recognize when energy-consuming products must be ENERGY STAR® or FEMP-designated.

**Item II—Contractor Code of Business Ethics and Conduct (FAR Case 2006-007)**

This final rule amends Federal Acquisition Regulation (FAR)Parts 2, 3, and 52 to address the requirements for a contractor code of business ethics and conduct and the display of Federal agency Office of the Inspector General (OIG) Fraud Hotline Posters. In response to public comments, this final rule reduces the burden on small entities by making the requirements for a formal training program and internal control system inapplicable to small businesses. If a small business subsequently finds itself in trouble ethically during the performance of a contract, the need for a training program and internal controls will likely be addressed by the Federal Government at that time, during a criminal or civil lawsuit or debarment or suspension.

**NOVEMBER 7, 2007****NUMBER 2005-21**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-21 are effective November 7, 2007, except for Items II, III, IV and VII, which are effective December 7, 2007.

**Item I—SAFETY Act: Implementation of DHS Regulations (FAR Case 2006-023) (Interim)**

This interim rule implements the SAFETY Act in the FAR. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the SAFETY Act is to ensure that the threat of liability does not deter potential manufacturers or sellers of antiterrorism technologies from developing, deploying, and commercializing technologies that could save lives. Examples of Qualified Anti-Terrorism Technologies (QATT) identified by DHS include—

- Vulnerability assessment and countermeasure and counter-terrorism planning tools;
- First responder interoperability solution;
- Marine traffic management system;
- Security services, guidelines, systems, and standards;
- Vehicle and cargo inspection system;
- X-ray inspection system;
- Trace explosives detection systems and associated support services;
- Maintenance and repair of screening equipment;
- Risk assessment platform;
- Explosive and weapon detection equipment and services;
- Biological detection and filtration systems;
- Passenger screening services;
- Baggage screening services;
- Chemical, biological, or radiological agent release detectors;
- Vehicle barriers;
- First responder equipment; and
- Architectural and engineering “hardening” products and services.

**Item II—Biobased Products Preference Program (FAR Case 2004-032)**

This final rule amends the Federal Acquisition Regulation (FAR) to implement 7 U. S. C. 8102 as enacted by section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by Sections 205 and 943 of the Energy Policy Act of 2005. Entitled Federal Procurement of Biobased Products, section 7

U. S. C. 8102 requires that a procurement preference be afforded biobased products within items designated by the Secretary of Agriculture. This program applies to acquisitions by Federal agencies using Federal funds for procurement, as well as Government contractors that use USDA-designated items in performance of a Government contract. It will provide increased opportunities for entities, both large and small, that manufacture or sell biobased products, while decreasing opportunities for businesses that manufacture or sell similar non-biobased products or provide components for the manufacturing of such products. A list of USDA-designated items is available at <http://www.usda.gov/biopreferred>.

### **Item III—FAR Part 27 Rewrite in Plain Language (FAR Case 1999-402)**

This final rule clarifies, streamlines, and updates text and clauses on Patents, Data, and Copyrights (FAR Part 27). This effort focused on rewriting the current FAR language into “plain language,” with the ultimate goal of making the policies and procedures more understandable to the reader. This rewrite was not intended to include substantive changes to Part 27 policies or procedures, except where necessary to comply with current statutory or regulatory requirements, or to resolve internal inconsistencies within FAR Part 27 and its associated clauses.

### **Item IV—Federal Computer Network (FACNET) Architecture (FAR Case 2006-015)**

This final rule amends the Federal Acquisition Regulation (FAR) to remove FACNET references and provide the opportunity to recognize the evolution of alternative technologies, processes, etc. that Federal agencies are using and will use to satisfy their acquisition needs without removing the use of FACNET for Federal agencies that may use the system. Where necessary in the FAR, the term has been replaced with a more appropriate term that incorporates various electronic data interchange systems. The proposed rule published February 1, 2007 is adopted as final without change.

### **Item V—Exemption of Certain Service Contracts from the Service Contract Act (SCA) (FAR Case 2001-004) (Interim)**

This interim rule amends Federal Acquisition Regulation (FAR) Parts 4, 15, 17, 22, and 52 to implement the U. S. Department of Labor’s (DoL) final rule issued January 18, 2001 (66 FR 5327) amending the regulations at 29 CFR part 4 to exempt certain contracts for services meeting specific criteria from coverage under the Service Contract Act. This rule imposes the DoL criteria and does not utilize the term “commercial services.” The rule incorporates slight revisions to the current exemption for consistency with the current DoL regulations and clarification of appropriate course of action for the contracting officer.

### **Item VI—Local Community Recovery Act of 2006 (FAR Case 2006-014) (Interim)**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a second interim rule amending the Federal Acquisition Regulation (FAR) to implement legislative amendments to the Stafford Act at 42 U. S. C. 5150.

The first rule implemented The Local Community Recovery Act of 2006, Pub. L. 109-218, which addressed set-asides for major disaster or emergency assistance acquisitions to businesses

that reside or primarily do business in the geographic area affected by the disaster or emergency. This local area set-aside could be done along with a small business set-aside.

After the first rule was published for comments in August, 2006, Congress further amended the same area of the Stafford Act in the Department of Homeland Security Appropriations Act, 2007, Public Law 109-295. The amended statute contains requirements for transitioning work to local firms in the geographic area affected by the disaster or emergency and for justifications for expenditures to entities outside the major disaster or emergency area. This second interim rule encompasses all of these changes.

### **Item VII—Labor Standards for Contracts Containing Construction Requirements- Contract Pricing Method References (FAR Case 2007-001)**

This final rule amends the Federal Acquisition Regulation(FAR) to revise references to published pricing sources available to the contracting officer in FAR 22. 404-12(c)(2). The rule removes the reference to “R. S. Means Cost Estimating System” as a commercial source for pricing data. The revision will provide greater flexibilities for contracting officers when selecting sources of pricing data.

### **Item VIII—Technical Amendments**

Editorial changes are made at FAR 25 and 52 in order to update references.

1. Section 1. 106 is corrected by correcting the order of FAR Segment 52. 225-18 with OMB Control Number “9000-0161” by placing it after FAR Segment 52. 225-11 with OMB Control Number “9000-0141”.
2. Section 7. 105 is corrected by removing paragraph (b)(18) and redesignating paragraphs (b)(19) through (b)(22) as (b)(18)through (b)(21).
3. Section heading 33. 205 is corrected by removing “Relationship of the Act to Public Law 85-804” and inserting “Relationship of the Act to Pub. L. 85-804” in its place.
4. The Matrix is corrected in the table, entry “52. 219-28”, by revising the entries under the headings “IBR” and “UCF” by removing “No” and “A” and adding “Yes” and “I” in its place, respectively.

**SEPTEMBER 6, 2007**

**NUMBER 2005-20**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-20 is effective September 6, 2007.

### **Federal Funding Accountability and Transparency Act (FFATA)—Reporting Requirement of Subcontractor Award Data (FAR Case 2006-029)**

This final rule amends the FAR to establish a pilot program to test the collection and accession of subcontract award data. As a result, subcontracts awarded and funded with Federal appropriated funds will be disclosed to the public in a single searchable website. However,

information reported under the pilot program will not be disclosed to the public. The FFATA requires the existence and operation of a searchable website that provides public access to information about Federal expenditures. Section 2(d) of the FFATA requires that a pilot program be established to test the collection and accession of subcontract award data. In order to implement Section 2(d) of the FFATA, the Councils are adding a new Subpart to FAR Part 4, with an associated clause in FAR Part 52, which addresses reporting subcontract awards. The pilot program will terminate no later than January 1, 2009. This rule applies to contracts with values equal to or greater than \$500 million awarded and performed in the United States, and requires the awardees to report all first tier subcontract awards exceeding \$1 million to the FFATA database at [www.esrs.gov](http://www.esrs.gov). The Councils chose these thresholds to ensure that a sufficient number of subcontract award reports will be entered in the database to permit assessment of its effectiveness without imposing a significant burden on contractors during the pilot program. The Government does not guarantee the reliability of the data reported. The Government has no mechanism to verify the data submitted. Before completion of the pilot program, the Councils will initiate a separate rulemaking process to establish the requirements for the final subcontract reporting database pursuant to the statute. This rule does not apply to classified contracts or commercial item contracts issued under FAR Part 12.

**AUGUST 17, 2007**

**NUMBER 2005-19**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-19 is effective August 17, 2007, except for Items II, IV, VI, and VII which are effective September 17, 2007.

**Item I—Reporting of Purchases from Overseas Sources(FAR Case 2005-034)**

This final rule converts the interim rule to a final rule with a minor change. The interim rule amended FAR Part 25 and added a provision (52. 225-18, Place of Manufacture) to implement Section 837 of Division A of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109-115). Section 837 requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies that are manufactured outside the United States. The new provision requests from offerors necessary data regarding place of manufacture. The new provision will require an offeror to indicate whether the place of manufacture of the end products it expects to provide in response to the solicitation is predominantly inside or outside the United States. Whenever the place of manufacture for a contract is coded outside the United States, the contracting officer will be required to enter into FPDS the reason for buying items manufactured outside the United States. In addition, the rule clarifies different tests used to determine the country of origin(FAR 25. 001) under the Buy American Act and the Trade Agreements Act.

**Item II—Changes to Lobbying Restrictions (FAR Case 2005-035)**

This final rule amends the FAR in order to be consistent with the Lobbying Disclosure Act of 1995 and the OMB Interim Final Guidance, and to improve clarity of the regulation through improved use of plain language and compliance with FAR drafting conventions. Among the changes, this final rule—

Includes the new concept of “lobbying contact” and brings in the concept of registrants under the Lobbying Act of 1995; Includes the OMB guidance that the term “appropriated funds” does not include profit or fee from a covered Federal action and that to the extent the contractor can demonstrate that the contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds; Formalizes in the regulations the changes that were already incorporated in the OMB Form Standard Form LLL, Disclosure of Lobbying Activities;

Removes 31 U. S. C. 1352, Limitations on Payment to Influence Certain Federal Transactions), from the list of laws that are inapplicable to subcontracts for the acquisition of commercial item; and

Makes the text, provisions, and clauses easier to understand, for both contracting officers and offerors/contractors.

### **Item III—Online Representations and Certifications Application Archiving Capability (FAR Case 2005-025)**

This final rule amends the FAR to eliminate confusion between the FAR record retention requirements at FAR 4. 803 and the requirements at FAR Subpart 4. 12 requiring contractors to submit Annual Representations and Certifications via the Online Representations and Certifications Application (ORCA), a part of the Business Partner Network. Using ORCA eliminates the administrative burden for contractors of submitting the same information to various contracting offices, and establishes a common source for this information to procurement offices throughout the Government. The interim rule published at 71 FR57362, September 28, 2006, is adopted as final without change.

### **Item IV—Requirement to Purchase Approved Authentication Products and Services (FAR Case 2005-017)**

This final rule amends the Federal Acquisition Regulation(FAR) to address the acquisition of products and services for personal identity verification that comply with requirements in Homeland Security Presidential Directive (HSPD) 12, “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPS PUB) 201, “Personal Identity Verification of Federal Employees and Contractors.”

### **Item V—Combating Trafficking in Persons (FAR Case 2005-012)(Interim)**

This revised interim rule amends the Federal Acquisition Regulation (FAR) to implement 22 U. S. C. 7104(g). This statute requires that contracts must include a clause that authorizes the department or agency to terminate the contract, if the contractor, contractor employee, subcontractor, or subcontractor employee engages in trafficking in persons. To accurately reflect the statutory language, the revised interim rule provides for contract termination for engaging in severe forms of trafficking in persons or procurement of a commercial sex act during the period of performance of the contract, and provides for contract termination for use of forced labor in the performance of the contract. While the interim rule only applied to contracts for services

(other than commercial), this revised interim rule applies to all contracts, including contracts for supplies, and all contracts for commercial items as defined at 2. 101.

#### **Item VI—Emergency Acquisitions (FAR Case 2005-038)**

This final rule converts the interim rule published at 71 FR38247, July 5, 2006, to a final rule with changes. This final rule amends the Federal Acquisition Regulation (FAR) to provide a consolidated reference to acquisition flexibilities that may be used during emergency situations. This change improves the contracting officer's ability to expedite acquisition of supplies and services during emergency situations. The final rule makes no change to existing contracting policy.

#### **Item VII—Small Business Credit for Alaska Native Corporations and Indian Tribes (FAR Case 2004-017)**

This final rule amends the Federal Acquisition Regulation (FAR) to provide that contractors may count subcontracts awarded to Alaskan Native Corporations (ANCs) and Indian tribes towards the satisfaction of goals for subcontracting with small business (SB) and small disadvantaged business (SDB) concerns, regardless of their size. This rule implements Section 702 of Pub. L. 107-117, as amended by Section 3003 of Pub. L. 107-206. These changes are expected to increase subcontracting opportunities for ANCs and Indian tribes, and improve Government and contractor subcontracting performance with these entities.

#### **Item VIII—New Designated Countries—Bulgaria, Dominican Republic, and Romania (FAR Case 2006-028) (Interim)**

This interim rule allows contracting officers to purchase the goods and services of Bulgaria, the Dominican Republic, and Romania without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. This trade agreement with the Dominican Republic joins the North American Free Trade Agreement (NAFTA), the Australia, Bahrain, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Guatemala, Honduras, and Nicaragua, which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is \$64, 786 for supplies and services (the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and \$7, 407, 000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). Bulgaria and Romania have become parties to the World Trade Organization Government Procurement Agreement, so they are now designated countries.

#### **Item IX—Online Representations and Certifications Application (ORCA) Review (FAR Case 2006-025) (Interim)**

This interim rule amends FAR 23. 406 and 23. 906, both titled Solicitation provision and contract clause, to revise the prescriptions for the use of 52. 223-9 and 52. 223-14 to provide for use under the same circumstances as the prescription for use of their associated provisions. These revisions allow the proper receipt of certification information and ensure compliance with the statutory requirements of 40 CFR Part 247 and 42 U. S. C. 11023.

**Item X—Free Trade Agreements—El Salvador, Honduras, and Nicaragua (FAR Case 2006-006)**

This final rule converts the interim rule published at 71 FR36935, June 28, 2006, to a final rule without change. This rule allows contracting officers to purchase the products of El Salvador, Honduras, and Nicaragua without application of the Buy American Act if the acquisition is subject to the Dominican Republic—Central America—United States Free Trade Agreement(CAFTA-DR). The CAFTA-DR took effect with respect to El Salvador on March 1, 2006. It took effect with respect to Honduras and Nicaragua on April 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, Bahrain, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the CAFTA-DR is \$64, 786 for supplies and services, and \$7, 407, 000 for construction.

**Item XI—Free Trade Agreements—Bahrain and Guatemala(FAR Case 2006-017)**

This final rule converts the interim rule published at 71 FR67776, November 22, 2006, to a final rule without change. The rule allows contracting officers to purchase the goods and services of Bahrain and Guatemala without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. These trade agreements with Bahrain and Guatemala join the North American Free Trade Agreement (NAFTA), the Australia, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Honduras, and Nicaragua that are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is \$64, 786 for supplies and services(the same as other Free Trade Agreements to date except Morocco and Canada) and \$7, 407, 000 for construction (the same as all other Free Trade Agreements to date except NAFTA). The threshold for applicability of the Bahrain Free Trade Agreement is \$193, 000(the same as the Morocco FTA and the WTO GPA) and \$8, 422, 165 for construction (the same as NAFTA).

**Item XII—Accepting and Dispensing of \$1 Coin (FAR Case 2006-027)(Interim)**

This interim rule implements the Presidential \$1 Coin Act of 2005 (Pub. L. 109-145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of the Presidents of the United States in the order of their service and to continue to mint and issue “Sacagawea-design” coins for circulation. In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises.

**Item XIII—Technical Amendments**

Editorial changes are made at FAR 31. 201-5, 32. 006-1, 32. 006-2, 52. 212-5, 52. 232-16, and 52. 245-1 in order to update references.

**JULY 5, 2007**

**NUMBER 2005-18**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-18 are effective June 30, 2007.

**Small Business Size Rerepresentation (FAR Case 2006-032)**

This interim rule amends the FAR to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434), entitled "Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations." The purpose of the SBA rule and this FAR rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts (long-term contracts, contracts involving novations, acquisitions, and mergers). Contractors will be required to rerepresent their size status on contracts prior to the end of the fifth year of a contract that is more than five years in duration (long-term contract); prior to exercising any option thereafter; following execution of a novation agreement; or following a merger or acquisition of the contractor, regardless of whether there is a novation agreement. A change in the size status does not change the terms and conditions of the contract, but the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements.

**MAY 15, 2007**

**NUMBER 2005-17**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-17 is effective June 14, 2007.

**Government Property (FAR Case 2004-025)**

This final rule amends Federal Acquisition Regulation (FAR) Part 45, Government Property, and associated FAR language and clauses to implement a policy that fosters efficiency, flexibility, innovation and creativity while continuing to protect the Government's interest. This rule simplifies procedures, clarifies language, and eliminates obsolete requirements related to the management and disposition of Government property in the possession of contractors by moving, clarifying, and deleting definitions; establishing a life-cycle approach to property management; and, sanctioning the use of consensus standards and/or industry-leading standards and practices for property management. This rule deletes outdated clauses, combines selected FAR property clauses into a single clause, and implements a new clause designed for military base and installation-level contracts awarded under the OMB Circular A-76 process. FAR language and associated clauses for special tooling, special test equipment and facilities contracts is deleted. It is not the Government's intention to change the intent or meaning of the language pertaining to "title to Government property."

**MARCH 22, 2007**

**NUMBER 2005-16**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-16 are effective March 22, 2007.

**Item I—Implementation of Wage Determinations On Line (WDOL)(FAR Case 2005-033)**

This final rule implements the Department of Labor (DOL) Wage Determinations On Line (WDOL) Internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O’Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 98, 98a, and 99 are deleted from FAR Part 53. This final rule also incorporates new geographical jurisdictions for DOL’s Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office publication of general wage determinations.

**Item II—Termination or Cancellation of Purchase Orders (FAR Case 2005-029)**

The rule revises the Federal Acquisition Regulation (FAR) to correct the inadvertent omission of an appropriate reference in FAR Part 13. 302-4(a) for termination for cause of those purchase orders that have been accepted in writing. This FAR revision is a correction to a reference and not a change to the contract termination options available in 52. 212-4(l) or (m). If a purchase order that has been accepted in writing by the contractor is to be terminated, contracting officers have the option to terminate for cause as well as terminate for convenience.

**Item III—Contracts with Religious Entities (Interim)(FAR Case 2006-019)**

This interim rule amends FAR Subpart 22. 8, Equal Employment Opportunity, and the associated clause at 52. 222-26, Equal Opportunity, to add an exemption for religious entities to the prohibition of discrimination on the basis of religion. Executive Order (E. O.) 13279 amended Section 204 of E. O. 11246 to permit religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity’s activities. Religious entities remain subject to other Equal Employment Opportunity requirements. When awarding a contract to a religious entity that contains the clause at FAR 52. 222-26, Equal Opportunity, the requirements of the clause with respect to employment of individuals of a particular religion to perform work connected with the carrying on of the contractor’s activities do not apply to a contractor that is a religious corporation, association, educational institution, or society.

**Item IV—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2006-012)**

The final rule revises the Federal Acquisition Regulation (FAR) to update the required contract clauses that implement provisions of law or executive orders for acquisitions of commercial items.

**FEBRUARY 13, 2007****NUMBER 2005-15 ADDENDUM**

This Addendum updates references inadvertently omitted from the original issuance of this FAC 2005-15. Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-15 Addendum is effective February 12, 2007.

## **Technical Amendments**

This document makes technical amendments to the Federal Acquisition Regulation (FAR) to update references inadvertently omitted from the original issuance of Federal Acquisition Circular 2005-15 published in the Federal Register at 71 FR 74656 on December 12 2006.

**DECEMBER 12, 2006**

**NUMBER 2005-15 (CORRECTION)**

In the original issuance of the FAC 2005-15 looseleaf version, the section heading 16. 603, Letter contracts, was inadvertently removed. The corrected pages are reissued in this supplement, as well as the original version.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-15 are effective February 12, 2007.

**DECEMBER 12, 2006**

**NUMBER 2005-15**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-15 are effective February 12, 2006.

### **Item I—Payments Under Time-and-Materials and Labor-Hour Contracts (FAR Case 2004-015)**

This final rule revises and clarifies policies related to award and administration of noncommercial item Time-and- Materials (T&M) and Labor-Hour (LH) contracts and the policies regarding payments made under those contracts. The objectives of the changes are to ensure fair and reasonable prices under T&M and LH contracts and to eliminate confusion related to payment amounts for subcontractor provided labor.

### **Item II—Additional Commercial Contract Types (FAR Case 2003-027)**

This final rule implements section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Title XIV of the Act, referred to as the Services Acquisition Reform Act of 2003 (SARA), amended section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355, 41 U. S. C. 264) to expressly authorize the use of Time-and-Materials (T&M) and Labor-Hour (LH) contracts for commercial services under specified conditions.

**NOVEMBER 22, 2006**

**NUMBER 2005-14**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-14 is effective November 22, 2006.

### **Item I—Common Identification Standard for Contractors (FAR Case 2005-015)**

This rule converts the interim rule published at 71 FR 208, January 3, 2006, to a final rule with changes. The rule amends the Federal Acquisition Regulation (FAR) by addressing the contractor personal identification requirements in Homeland Security Presidential Directive

(HSPD) 12, “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPSPUB) Number 201, “Personal Identity Verification (PIV) of Federal Employees and Contractors.” The primary objectives of HSPD-12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors who require routine physical access to Federally-controlled facilities, and/or routine access to Federally-controlled information systems.

### **Item II—Removal of Sanctions Against Certain EU Countries(FAR Case 2005-045)**

This rule converts the interim rule published at 71 FR20305, April 19, 2006, to a final rule without change. The interim rule removed the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement. These sanctions did not apply to small business set-asides, to acquisition below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products, services, and construction that were previously prohibited by the sanctions.

### **Item III—Free Trade Agreements—Bahrain and Guatemala (Interim)(FAR Case 2006-017)**

This interim rule allows contracting officers to purchase the goods and services of Guatemala and Bahrain without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. These trade agreements with Guatemala and Bahrain join the North American Free Trade Agreement (NAFTA), the Australia, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Honduras, and Nicaragua, which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America-United States Free Trade Agreement is \$64, 786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and \$7, 407, 000 for construction(the same as all other Free Trade Agreements to date except NAFTA). The threshold for applicability of the Bahrain Free Trade Agreement is \$193, 000 (the same as the Morocco FTA and the WTO GPA) and \$8, 422, 165 for construction (the same as NAFTA).

### **Item IV—Free Trade Agreements—Morocco (FAR Case 2006-001)**

This final rule converts the interim rule published in the Federal Register at 71 FR 20306, April 19, 2006, to a final rule without change. This rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreements. The U. S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements, which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is \$193, 000 for supplies and services and \$7, 407, 000 for construction.

**Item V—Technical Amendments**

Editorial changes are made at FAR 15. 404-1, 22. 1006, 22. 1304, 28. 202, 52. 212-5, 52. 222-43, 52. 228-15, and 52. 228-16, in order to update references.

**SEPTEMBER 28, 2006****NUMBER 2005-13**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-13 is effective September 28, 2006.

**Item I—Implement OMB Policy on the Use of Brand Name Specifications (Interim) (FAR Case 2005-037)**

This interim rule amends the Federal Acquisition Regulation (FAR) to implement the memoranda issued by the Office of Management and Budget dated April 11, 2005 and April 17, 2006, requiring agencies to publish on the Governmentwide point of entry (GPE) or e-Buy the documentation required by the FAR to support the use of a brand name specification. The rule is intended to limit the use of brand name specifications and provide for maximum competition.

**Item II—Information Technology Security (FAR Case 2004-018)**

This final rule amends the interim rule published September 30, 2005, as corrected on November 14, 2005, to a final rule without change. The interim rule amended FAR Parts 1, 2, 7, 11, and 39 to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA), (Title III of Public Law 107-347, the E-Government Act of 2002 (E-Gov Act)). The rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

**Item III—Online Representations and Certifications Application (ORCA) Archiving Capability (Interim) (FAR Case 2005-025)**

This interim rule amends FAR Parts 4, 12, 14, and 15 to address the record retention policy where the Online Representations and Certifications Application (ORCA) is used to submit an offeror's representations and certifications. Under FAR Subpart 4. 12, prospective contractors are required to submit Annual Representations and Certifications via the ORCA. Data in ORCA is archived and electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically via ORCA, the contracting officer may reference the date of ORCA verification in the associated Government contract file rather than including a paper copy of the electronically-submitted representations and certifications in the file. Such a reference satisfies contract file documentation requirements of 4. 803(a)(11). However, if an offeror identifies changes to ORCA data pursuant to the FAR provisions at 52. 204-8(c) or 52. 212-3(k), the contracting officer must include a copy of the changes in the contract file.

**Item IV—Inflation Adjustment of Acquisition-Related Thresholds(FAR Case 2004-033)**

This final rule adjusts acquisition-related thresholds in the FAR for inflation. It implements Section 807 of the Ronald

W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 807 provides for adjustment every 5 years of acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. This rule also escalates some nonstatutory acquisition-related thresholds. Often any impact of these threshold increases will be beneficial, by preventing burdensome requirements from applying to more and more small dollar value acquisitions, which are the acquisitions in which small businesses are most likely to participate. One threshold change in this rule which may temporarily impact small business is the increase of the micro-purchase threshold (FAR 2. 101) from \$2, 500 to \$3, 000, because the simplified acquisition threshold will not be raised at this time. Other frequently used thresholds that are adjusted include—

- The FPDS reporting threshold (FAR 4. 602(c)) will be raised from \$2, 500 to \$3, 000.
- Commercial Items test program ceiling (FAR 13. 500) will be raised from \$5, 000, 000 to \$5, 500, 000.
- The cost and pricing data threshold (FAR 15. 403-4) will be raised from \$550, 000 to \$650, 000.

The prime contractor subcontracting plan (FAR 19. 702) floor will be raised from \$500, 000 to \$550, 000, but for construction(\$1, 000, 000) is unchanged.

**Item V—Trade Agreements—Thresholds (FAR Case 2005-030)**

This final rule converts the interim rule published at 71 FR864, January 5, 2006, to a final rule without change. This rule changes the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements with Canada, Mexico, Chile, Singapore, and Australia. These threshold increases occur every two years in order to keep pace with inflation.

**Item VI—Reporting of Purchases from Overseas Sources (Interim)(FAR Case 2005-034)**

This interim rule amends FAR Part 25 and adds a provision in FAR 52. 225 to implement Section 837 of Division A of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109-115). Section 837 requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies that are manufactured outside the United States. The new provision requests from offerors necessary data regarding place of manufacture. The new provisions will require an offeror to indicate whether the place of manufacture of the end products it expects to provide in response to the solicitation is predominantly inside or outside the United States. Whenever the place of manufacture for a contract is coded outside the United States, the contracting officer will be required to enter into Federal Procurement Data System (FPDS) the reason for buying items manufactured outside the United States.

### **Item VII—Exception to the Buy American Act for Commercial Information Technology (FAR Case 2005-022)**

This final rule converts the interim rule published at 71 FR223, January 3, 2006, to a final rule without change. This final rule amends FAR 25. 103 and Subpart 25. 11 to implement Section 535(a) of Division F of the Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts. Section 535(a) authorizes an exception to the Buy American Act for acquisitions of information technology that are commercial items. The final rule applies to all offerors responding to solicitations for commercial information technology where the Buy American Act previously applied (generally, acquisitions between the micro-purchase threshold and \$193, 000). The effect of this exemption is that the following clauses are no longer applicable in acquisition of commercial information technology:

- FAR 52. 225-1, Buy American Act—Supplies,
- FAR 52. 225-2, Buy American Act Certificate,
- FAR 52. 225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act,
- FAR 52. 225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

This is because the Buy American Act no longer applies. The Free Trade Agreement non-discriminatory provisions are no longer necessary since all products now are treated without the restrictions of the Buy American Act.

The Trade Agreements provision and clause at FAR 52. 225–5 and FAR 52. 225–6 are still necessary when the Trade Agreements Act applies (acquisitions above \$193, 000). The Trade Agreements provision and clause already waive applicability of the Buy American Act for eligible products and are needed to implement the restrictions on procurement of noneligible end products. Section 535 and subsequent similar sections waived only the Buy American Act, not all restrictions on the purchase of foreign information technology.

### **Item VIII—Technical Amendments**

Editorial changes are made at FAR 1, 3, 4, 5, 7, 13, 26, 33, 49, 50, 52, and 53 in order to update references.

#### **Looseleaf Only Corrections**

42. 1105 [Corrected]

1. Section 42. 1105 is corrected in the table under the word “Criterion”, in the second line, by removing “12. 3” and adding “11. 6” in its place.

**AUGUST 4, 2006**

**NUMBER 2005-12**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-12 is effective August 4, 2006.

**Local Community Recovery Act of 2006 (Interim)(FAR Case 2006-014)**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the FAR to implement the Local Community Recovery Act of 2006. The Local Community Recovery Act of 2006 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize set-asides for major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency.

**JULY 5, 2006**

**NUMBER 2005-11**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-11 is effective July 5, 2006.

**Item I—Earned Value Management System (EVMS)(FAR Case 2004-019)**

This final rule amends the Federal Acquisition Regulation to implement Earned Value Management System (EVMS) policy in accordance with OMB Circular A-11, Part 7 and the supplement to Part 7, the Capital Planning Guide. The FAR will require the use of an EVM System that complies with the guidelines of ANSI/EIA Standard - 748, in major acquisitions for development, and in other acquisitions in accordance with agency procedures. An agency shall conduct an Integrated Baseline Review (IBR) when EVMS is required. Offerors shall not be eliminated from consideration for contract award because they do not have an EVMS that is compliant with the ANSI/EIA standards, provided they submit an EVMS implementation plan with their proposal.

**Item II—Emergency Acquisitions (FAR Case 2005-038)**

This interim rule revises FAR Part 18 to provide a single reference to acquisition flexibilities that may be used during emergency situations. This change is expected to improve the Government's ability to expedite acquisition of supplies and services during emergency situations. The FAR Part 18 makes no change to existing contracting policy.

**JUNE 28, 2006**

**NUMBER 2005-10**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-10 are effective July 28, 2006, except for Items IV, V, and VII which are effective June 28, 2006.

**Item I—Central Contractor Registration—Taxpayer Identification Number (TIN) Validation (FAR Case 2005-007)**

The rule adds the process of the government validating a Central Contractor Registration (CCR) registrant's taxpayer identification number (TIN) with the Internal Revenue Service (IRS) to improve the quality of data in the CCR and the federal procurement system. Additionally, the rule removes outdated language requiring modifications of contracts prior to December 31, 2003, regarding CCR.

**Item II—Procedures Related to Procurement Center Representatives (FAR Case 2006-003)**

This final rule amends the Federal Acquisition Regulation (FAR) to provide internal procedures to cover situations when the FAR requires interaction with a procurement center representative and one has not been assigned to the procuring activity or contract administration office. It primarily impacts contracting officers and procurement center representatives.

**Item III—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004-035)**

This final rule amends the interim rule issued in FAC 2005-004 and implements an amendment to 10 U. S. C. 2306a. The policy requires that the exception from the requirement to obtain certified cost or pricing data for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than \$500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 of Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act of Fiscal Year 2005 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005. This new policy results from a statute which changed 10 U. S. C. 2306a and applies only to contracts or task or delivery orders funded by DoD, NASA, and the Coast Guard. The new policy does, however, also apply to contracts awarded or task or delivery orders placed on behalf of DoD, NASA, or the Coast Guard by an official of the United States outside of those agencies, because the statutory requirement of Section 818 applies to the funds provided by DoD, NASA, or the Coast Guard.

The change to the interim rule clarifies the policy to ensure it is applied properly. The threshold in the rule applies to an instant contract action, not to the total value of all contract actions and, as applicable to subcontractors, the threshold applies to the value of the subcontract, not the value of the prime contract.

**Item IV—Implementation of Wage Determinations On Line (WDOL)(Interim) (FAR Case 2005-033)**

This interim rule implements the Department of Labor (DOL) Wage Determinations On Line (WDOL) internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website.

The Contracting Officer (CO) will be able to check the WDOL website (<http://www.wdol.gov>) to find the applicable wage determination for a contract action subject to the SCA or DBA. If the WDOL database does not contain the applicable wage determination for a SCA contract action, the CO must use the e98 process to request a wage determination from DOL. The e98 means a DOL approved electronic application, (available at <http://www.wdol.gov>), whereby a contracting officer submits pertinent information to the DOL and requests a wage determination directly from the Wage and Hour Division. With regard to DBA requirements, if the WDOL database

does not contain the applicable wage determination for a DBA contract action, the CO must request a wage determination by submitting SF-308 to DOL.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 99, 98, and 98a are deleted from FAR Part 53. This interim rule also incorporates new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office (GPO) publication of general wage determinations.

**Item V—Free Trade Agreements – El Salvador, Honduras, and Nicaragua (Interim) (FAR Case 2006-006)**

This interim rule allows contracting officers to purchase the goods and services of El Salvador, Honduras, and Nicaragua without application of the Buy American Act, if the acquisition is subject to the Free Trade Agreements. The U. S. Trade Representative negotiated the Dominican Republic–Central America–United States Free Trade Agreement with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. However, the agreements will not all take effect at the same time. This agreement with El Salvador, Honduras, and Nicaragua joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Dominican Republic–Central America–United States Free Trade Agreement is \$64, 786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and \$7, 407, 000 for construction (the same as all other Free Trade Agreements to date except NAFTA).

**Item VI—Buy-Back of Assets (FAR Case 2004-014)**

This final rule amends the Federal Acquisition Regulation (FAR) contract cost principle for depreciation costs. The final rule adds language which addresses the allowability of depreciation costs of reacquired assets involved in a sale and leaseback arrangement.

**Item VII—Technical Amendments**

Editorial changes are made at FAR 8. 714, 33. 102, and 52. 225-11 in order to update references.

**Looseleaf Only Corrections**

15. 408 [Corrected]

1. Section 15. 408 is corrected in paragraph C of Table 15-2, I. General Instructions, by redesignating paragraphs (a) and (b) as (1) and (2) respectively.

**APRIL 19, 2006**

**NUMBER 2005-09**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-09 are effective April 19, 2006, except for Items I, III, and IX, which are effective May 19, 2006.

**Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2004-007)**

This final rule amends the FAR to require contracting officers to make solicitation-related information that requires limited availability or distribution available to offerors electronically via the Federal Technical Data Solution (FedTeDS), unless certain exceptions apply. FedTeDS provides secure, user identification and password protected access to solicitation-related data that should not be made available to the public on the Governmentwide Point of Entry (GPE) website.

**Item II—Definition of Information Technology (FAR Case 2004-030)**

This final rule adopts without change the interim rule which amended FAR 2. 101(b) by revising the definition for “information technology” to reflect changes to the definition resulting from the enactment of Public Law 108-199, Consolidated Appropriations Act, 2004. Section 535(b) of Division F of Public Law 108-199 permanently revises the term “information technology,” which is defined at 40 U. S. C. 11101, to add “analysis” and “evaluation” and to clarify the term “ancillary equipment.”

**Item III—OMB Circular A-76 (FAR Case 2004-021)**

This final rule amends FAR Subpart 7. 3 to provide language that is consistent with OMB Circular A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003. In addition, it provides two new provisions that inform potential offerors of the procedures the Government will follow for streamlined and standard competitions, as they are defined in the Circular.

**Item IV—Combating Trafficking in Persons (FAR Case 2005-012)(Interim)**

This interim rule amends FAR Parts 12, 22 and 52 to implement the Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005. The statute (22 U. S. C. 7104(g)) requires that the contract contain a clause allowing the agency to terminate the contract without penalty if the contractor or subcontractor engage in severe forms of trafficking in persons or has procured a commercial sex act, or used forced labor in the performance of the contract. The interim rule applies to contractors awarded service contracts (other than commercial service contracts under Part 12). Such contractors must develop policies to combat trafficking in persons and notify the contracting officer immediately of any information it received from any source that alleges a contract employee has engaged in conduct that violates this policy, and any actions taken against the employee pursuant to the clause.

**Item V—Confirmation of HUBZone Certification (FAR Case 2005-009)**

The interim rule published at 70 FR 43581, July 27, 2005 is converted to a final rule without change. The interim rule amended FAR 19. 703 and the clause at 52. 219-9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone)small business concern is certified, consistent with the requirements of 15 U. S. C. 632 et seq. , as amended. This change is expected to increase subcontracting

opportunities for certified HUBZone small business concerns and ensure accurate reporting of subcontract awards to HUBZone small business concerns under Government contracts.

#### **Item VI—Expiration of the Price Evaluation Adjustment(FAR Case 2005-002)**

This final rule adopts, without change, an interim rule that amended the FAR to cancel the authority for civilian agencies, other than NASA and the U. S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change was required because the statutory authority for the adjustments had expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U. S. Coast Guard are authorized to continue applying the price evaluation adjustment.

#### **Item VII—Removal of Sanctions Against Certain European Union Member States (FAR Case 2005-045) (Interim)**

This interim rule removes the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement (WTO GPA). These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products, services, and construction that were previously prohibited by the sanctions.

#### **Item VIII—Free Trade Agreements - Morocco (FAR Case 2006-001)(Interim)**

This interim rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreement. The U. S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement(NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is \$193, 000 for supplies and services, \$7, 407, 000 for construction.

#### **Item IX—Fast Payment Procedures (FAR Case 2004-031)**

This amendment permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked “Fast Pay”, provided the contract includes the “Fast Payment Procedure” clause. If the Fast Payment clause is in the contract, such unmarked invoices will no longer be rejected. Instead, they will be paid using either fast payment or normal payment procedures. In addition, the revision deletes the requirement for marking invoices “No Receiving Report Prepared.”

#### **X—Technical Amendment**

An editorial change is made at FAR 19. 1005(a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry “541310” the word “or”.

**JANUARY 5, 2006**

**NUMBER 2005-08**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-08 are effective January 5, 2006.

**Trade Agreements—Thresholds (Interim) (FAR Case 2005-030)**

This interim rule changes the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements with Canada, Mexico, Chile, Singapore, and Australia. These threshold increases occur every two years in order to keep pace with inflation.

**JANUARY 3, 2006**

**NUMBER 2005-07**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-07 are effective February 2, 2006, except for Items II, IV, V, VI, VII, IX, X and XI, which are effective January 3, 2006.

**Item I—Transportation: Standard Industry Practices(FAR Case 2002-005)**

This final rule amends FAR Parts 1, 42, 46, 47, 52, and 53 to clarify and update the FAR coverage to reflect the latest changes to the Federal Management Regulation and statutes that require use of commercial bills of lading for domestic shipments. This final rule amends the FAR to—

- Move FAR Subpart 42. 14, Traffic and Transportation Management, to FAR Part 47, Transportation;
- Delete the clauses at FAR 52. 242-10 and FAR 52. 242-11 and revise and relocate FAR clause 52. 242-12 to FAR 52. 247-68;
- Add definitions of “bill of lading, ” “commercial bill of lading, ” and “Government bill of lading” and clarify the usage of each term throughout FAR Part 47;
- Add definitions of “Government rate tenders, ” “household goods, ” “noncontiguous domestic trade, ” and “released or declared value”;
- Require the use of commercial bills of lading for domestic shipments;
- Revise the references to “49 U. S. C. 10721” to read “49

U. S. C. 10721 and 13712” throughout FAR Part 47 to make it clear that Government rate tenders can be used in certain situations for the transportation of household goods by rail carrier(authorized by 49 U. S. C. 10721), as well as by motor carrier, water carrier, and freight forwarder (authorized by 49 U. S. C. 13712 and the definition of “carrier” at 49 U. S. C. 13102); and

- Update the fact that the Federal Motor Carrier Safety Administration prescribes commercial zones at 49 CFR 372Subpart B.

## **Item II—Common Identification Standard for Contractors (FAR Case 2005-015) (Interim)**

This interim rule amends the FAR by addressing the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD-12), “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPSPUB) Number 201, “Personal Identity Verification (PIV) of Federal Employees and Contractors.” The primary objectives of HSPD-12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors.

## **Item III—Change to Performance-Based Acquisition (FAR Case 2003-018)**

This final rule amends the FAR by changing the terms “performance-based contracting (PBC)” and “performance-based service contracting (PBSC)” to “performance-based acquisition (PBA)” throughout the FAR; adding applicable PBA definitions of “Performance Work Statement (PWS)” and “Statement of Objectives (SOO)”, and describing their uses; clarifying the order of precedence for requirements; eliminating redundancy where found; modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBA methods to contracts and orders of varying complexity; and reducing the burden of force-fitting contracts and orders into PBA, when it is not appropriate.

## **Item IV—Free Trade Agreements—Australia and Morocco (FAR Case 2004-027)**

This final rule converts the interim rule published at 69 FR 77870, December 28, 2004, to a final rule with changes. It allows contracting officers to purchase the products of Australia without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U. S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which were scheduled to go into effect on or after January 1, 2005, according to Public Laws 108-286 and 108-302. However, the Morocco Free Trade Agreement has not yet entered into force and, therefore, the implementation of the Morocco Free Trade Agreement has been removed from the final rule. The Australian Free Trade Agreement joins the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Australian Free Trade Agreement is \$58, 550 (the same as other Free Trade Agreements to date).

## **Item V—Deletion of the Very Small Business Program (FAR Case 2005-013)**

This final rule amends the FAR to delete the Very Small Business Pilot Program. Under the pilot program, contracting officers were required to set-aside for very small business concerns certain acquisitions with an anticipated dollar value between \$2, 500 and \$50, 000. The Councils are removing the FAR coverage because the legislative authority for the program terminated on September 30, 2003. Acquisitions previously set-aside for pilot program vendors will now be open to other small businesses.

**Item VI—Purchases From Federal Prison Industries—Requirement for Market Research (FAR Case 2003-023)**

This final rule converts the interim rule published in FAC2001-21 at 69 FR 16148, March 26, 2004, and the interim rule published as Item I of FAC 2005-03 at 70 FR 18954, April 11, 2005, to a final rule with amendments at FAR 8. 602 to clarify the applicability of the rule. The rule implements Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries, Inc. , unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency, pursuant to Governmentwide procurement regulations issued pursuant to 41 U. S. C. 421(c)(1) that impose procedures, standards, and limitations of 10 U. S. C. 2410n.

**Item VII—Exception from Buy American Act for Commercial Information Technology (Interim) (FAR Case 2005-022)**

This interim rule amends FAR 25. 103 and FAR Subpart 25. 11 to implement Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items. This applies only to the use of FY 2005 funds. This same exemption appeared last year in section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108-199). The FY 04 exemption was implemented through deviations by the individual agencies.

The interim rule is based on the estimation that the exemption of commercial information technology is likely to continue. If the exception does not appear in a future appropriations act, a prompt change to the FAR will be made to limit applicability of the exemption to the fiscal years to which it applies. The effect of this exemption is that the following clauses are no longer applicable in acquisition of commercial information technology:

- FAR 52. 225-1, Buy American Act—Supplies.
- FAR 52. 225-2, Buy American Act Certificate.
- FAR 52. 225-3, Buy American Act—Free Trade Agreements— Israeli Trade Act.
- FAR 52. 225-4, Buy American Act—Free Trade Agreements— Israeli Trade Act Certificate.

This is because the Buy American Act no longer applies; and the Free Trade Agreement non-discriminatory provisions are no longer necessary, since all products now are treated without the restrictions of the Buy American Act.

**Item VIII—Removal of Sanctions Against Libya (FAR Case 2005-026)**

This final rule removes Libya from the list of prohibited sources at FAR Subpart 25. 7 and the associated clause at 52. 225-13, Restriction on Certain Foreign Purchases. Acquisitions of

products from Libya may still be subject to restrictions of the Buy American Act, trade agreements, or other domestic source restrictions. The Department of State has not yet removed Libya from the list of state sponsors of terrorism.

### **Item IX—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003-024)**

This final rule converts, with minor changes, the Federal Acquisition Regulation (FAR) interim rule published in the Federal Register at 70 FR 11761, March 9, 2005. The rule impacts contractors with Department of Defense (DoD), National Aeronautics and Space Administration (NASA), or Coast Guard cost-reimbursement contracts and Government personnel who award and administer those contracts. The interim rule amended FAR 44. 201-2, Advance Notification Requirements, and 52. 244-2, Subcontracts, to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, in Public Law 108-136. Section 842 removed the requirement under cost-reimbursement contracts with DoD, Coast Guard, and NASA for contractors to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract. The final rule makes two changes that resulted from one of the public comments. The final rule deletes Alternate I from FAR 44. 204, Contract clauses for the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, and deletes the current Alternate I from 52. 244-2, Subcontracts.

### **Item X—Annual Representations and Certifications—NAICS Code/Size (FAR Case 2005-006)**

This final rule amends the FAR provision at 52. 204-8 to provide a place for contracting officers to inform prospective offerors of the NAICS code and small business size standard applicable to the procurement.

### **Item XI—Technical Amendments**

Editorial changes are made at FAR 9. 203(b)(2), 11. 102, 11. 201(a), 11. 201(b), 11. 201(d)(2), 11. 201(d)(3), 11. 201(d)(4), 11. 204(b), 25. 1101(e)(2), and the provisions at 52. 211-2 and 52. 212-1 in order to update references.

The authority citation for FAR parts 27, 34, 38, 39, 43, 46, 48, and 50 is revised.

### **Looseleaf Only Corrections**

47. 305-6 [Corrected]

1. Section 47. 305-6 is corrected in paragraph (f)(1)(ii) by removing the word “pot” and adding the word “port” in its place.
2. The Matrix is corrected at entry 52. 212-5, Alternate I, in the UTL SVC column, by removing “Z” and adding “A” in its place; and at the end of the Matrix at “Note 1” by removing “52. 244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), Alternate I.”

**NOVEMBER 14, 2005**

**NUMBER 2005-06 CORRECTION**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-06 Correction are effective November 14, 2005.

Federal Acquisition Circular (FAC) 2005-06, which was published at 70 FR 57448, September 30, 2005, is corrected as specified below:

**Item I—Information Technology Security (FAR Case 2004-018, Correction)**

The definition “Sensitive but unclassified (SBU)information” was inadvertently added at FAR 2.101(b). This correction document removes that definition.

**Item IX—Accounting for Unallowable Costs (FAR Case 2004-006, Correction)**

Section 31. 201-6 is corrected in the introductory text of paragraph (c)(2) by removing the references “(c)(1)(i), (c)(1)(ii), and (c)(1)(iii)” and adding “(c)(2)(i), (c)(2)(ii), and (c)(2)(iii)” in its place.

**SEPTEMBER 30, 2005**

**NUMBER 2005-06**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-06 are effective September 30, 2005, except for Items IX, X, and XI, which are effective October 31, 2005.

**Item I—Information Technology Security (FAR Case 2004-018)**

This interim rule amends the FAR to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

This interim rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

**Item II—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004-001)**

This final rule implements Section 1427(b) of the Services Acquisition Reform Act of 2003, which prohibits architect-engineering services from being offered under GSA multiple-award schedule contracts or under Governmentwide task and delivery order contracts unless they are awarded using the procedures of the Brooks Architect-Engineer Act and the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal district or outlying area, in which the services are to be performed. This rule is of interest to agencies and contracting officers that use GSA schedules and Governmentwide task and delivery order contracts.

**Item III—Title 40 of United States Code Reference Corrections (FAR Case 2005-010)**

This final rule amends the FAR to reflect the most recent codification of Title 40 of the United States Code. No substantive changes are being made to the FAR.

**Item IV—Implementation of the Anti-Lobbying Statute(FAR Case 1989-093)**

This final rule amends the FAR to implement section 319 of the Department of the Interior and Related Agencies Appropriation Act, Public Law 101-121, which added a new section 1352 to Title 31 of the United States Code, entitled “Limitations on the use of funds to influence certain Federal contracting and financial transactions.” Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan. It also requires that each person who requests or receives a contract, grant or cooperative agreement in excess of \$100,000 or a Federal commitment to insure or guarantee a loan in excess of \$150,000 must disclose lobbying with other than appropriated funds. The rule requires contracting officers, in accordance with FAR 3.808, to insert in all solicitations and contracts expected to exceed \$100,000 the provision at FAR 52.203-11, “Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction,” and the clause at FAR 52.203-12, “Limitations on Payments to Influence Certain Federal Transactions.”

**Item V—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004-037)**

This final rule converts the interim rule published in the Federal Register at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule amended the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U. S. Coast Guard from \$50 million to \$75 million. This change implemented section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U. S. C. 2304(f)(1)(B). In addition, corresponding changes have been made to FAR 13.501. The rule will reduce administrative burden for ordering activities.

**Item VI—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program(FAR Case 2004-036)**

This final rule finalizes, without change, the interim rule published in the Federal Register at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 by adding landscaping and pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve amount, currently \$25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals. The change may impact small businesses because these awards were previously set-aside for small businesses.

**Item VII—Powers of Attorney for Bid Bonds (FAR Case 2003-029)**

This final rule is of particular interest to contracting officers and offerors in acquisitions of construction that require a bid bond. This rule was initiated at the request of the Office of Federal Procurement Policy to resolve the controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney. This rule amends the FAR to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. This revision to FAR parts 19 and 28 removes the matter of authenticity and enforceability of powers of attorney from contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening.

**Item VIII—Expiration of the Price Evaluation Adjustment(Interim) (FAR Case 2005-002)**

This interim rule cancels the authority for civilian agencies, other than NASA and the U. S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change is required because the statutory authority for the adjustments has expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U. S. Coast Guard are authorized to continue applying the price evaluation adjustment.

**Item IX—Accounting for Unallowable Costs (FAR Case 2004-006)**

This final rule amends FAR 31. 201-6, Accounting for unallowable costs, by adding paragraphs (c)(2) through (c)(5) to provide specific criteria on the use of statistical sampling as an acceptable practice to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also amends FAR 31. 109, Advance agreements, by adding "statistical sampling methods" as an example of the type of item for which an advance agreement may be appropriate. The case was initiated by the Director, Defense Procurement and Acquisition Policy, who established an interagency ad hoc committee to perform a comprehensive review of FAR Part 31, Contract Cost Principles and Procedures. The rule is of particular importance to contracting officers and contractors who negotiate contracts and modifications, and determine costs in accordance with the FAR Part 31.

**Item X—Reimbursement of Relocation Costs on a Lump-Sum Basis(FAR Case 2003-002)**

This final rule amends FAR 31. 205-35 to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

**Item XI—Training and Education Cost Principle(FAR Case 2001-021)**

This final rule amends the FAR by revising the contract cost principle at FAR 31. 205-44, Training and education costs. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs.

**Looseleaf Only Corrections**

52. 301 [Corrected]

1. The Matrix is corrected at entries 52. 216-16 and Alternate I in the “Prescribed In” column by removing “16. 405(a)” and adding “16. 406(a)” in its place.
2. The Matrix is corrected at entries 52. 216-17 and Alternate I in the “Prescribed In” column by removing “16. 405(b)” and adding “16. 406(b)” in its place.
3. The Matrix is corrected at entry 52. 222-5 in the “IBR” column by removing “Yes” and adding “No” in its place; and in the “UCF” column by removing “I” and adding “L” in its place.

**JULY 27, 2005**

**NUMBER 2005-05**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-05 is effective August 26, 2005, except for Items I, II, IV, and VI which are effective July 27, 2005.

**Item I—Definition of Information Technology (FAR Case 2004-030)**

This interim rule amends FAR 2. 101(b) to revise the definition of “information technology” to reflect the recent changes to the definition resulting from the enactment of Public Law 108-199.

The new language at Section 535(b) of Division F of Public law 108-199 permanently revises the term “information technology,” which is defined at 40 U. S. C. 11101, to add “analysis” and “evaluation” and to clarify the term “ancillary equipment.” This permanent change to the terminology necessitated this interim rule to amend the FAR.

**Item II—Documentation Requirement for Limited Sources under Federal Supply Schedules (FAR Case 2005-004)**

On June 18, 2004, DoD, GSA, and NASA published FAR case 1999-603 (69 FR 34231) amending the FAR to incorporate ordering procedures for orders against Federal Supply Schedules (FSS), including the documentation requirements for justifying sole source orders. The rule inadvertently established these justification and approval requirements for sole source orders instead of when an ordering activity restricts consideration of schedule contractors to less than the required number. This rule corrects that oversight. The final rule also based the content of the documentation requirements on that in FAR 6. 303-2. By doing so, the rule established some unintentional and inapplicable content requirements, especially for orders under the simplified acquisition threshold (SAT). This rule corrects those unintended changes by establishing the standard for justifying restricted orders under the SAT and accurately specifying the justification content for restricted orders above the SAT. The rule will clarify the procedures for ordering activities.

**Item III—Payment Withholding (FAR Case 2004-003)**

Contracting officers and contracting officer's representatives who award or administer Time-and-Materials or Labor-Hour contracts or orders should be familiar with this amendment. Also, contractor personnel who are responsible for managing invoicing for those types of contracts should be aware of this new requirement. The amendment removes the mandatory requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials contract, unless it is necessary to withhold payment to protect the Government's interest or otherwise prescribed in the contract Schedule. It requires the use of a contract modification in order to make payment withholding and, in the event withholding is required, the contractor is responsible to withhold the amounts from its billings.

**Item IV—Confirmation of HUBZone Certification (FAR Case 2005-009)**

This interim rule amends FAR 19. 703 and the clause at 52. 219-9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U. S. C. 632 et seq. , as amended. This change is expected to increase subcontracting opportunities for certified HUBZone small business concerns and ensure accurate reporting of awards to HUBZone small business concerns under Government contracts.

**Item V—Government Property Rental and Special Tooling (FAR Case 2002-015)**

This final rule amends FAR Parts 45 and 52 to clarify the basis for determining rental charges for the use of Government property. The change, which is intended to promote the dual use of such property, will impact contracting officers and property administrators responsible for the management of Government property and contractors that desire to use Government property for commercial purposes.

**Item VI—Technical Amendment**

An editorial change is made at FAR 4. 1102 in order to update a reference.

**JUNE 8, 2005****NUMBER 2005-04**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive materials contained in FAC 2005-04 are effective July 8, 2005, except for Items I, II, III, and IV, which are effective June 8, 2005.

**Item I—Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2004-010)**

This final rule adopts, without change, the interim rule published in the Federal Register at 69 FR 76352, December 20, 2004, and issued as Item IV of FAC 2001-26. It amends FAR parts 2, 22, and 52 to implement Executive Order (E. O.) 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees, and Department of Labor regulations at 29 CFR 470. The rule requires Government contractors and subcontractors to post notices informing their employees that under Federal law they cannot be required to join a union or maintain

membership in a union to retain their jobs. The required notice also advises employees who are not union members that they can object to the use of their union dues for certain purposes. This rule applies to Federal contractors and subcontractors with contracts or subcontracts that exceed the simplified acquisition threshold, unless covered by an exemption granted by the Secretary of Labor.

### **Item II—Telecommuting for Federal Contractors(FAR Case 2003-025)**

This rule finalizes without changes the interim rule published in the Federal Register at 69 FR 59701, October 5, 2004, and issued as Item III of FAC 2001-025. This final rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108-136), which prohibits agencies from including a requirement in a solicitation that precludes an offeror from permitting its employees to telecommute or, when telecommuting is not precluded, from unfavorably evaluating an offeror's proposal that includes telecommuting unless it would adversely affect agency requirements, such as security. Contracting officers awarding service contracts should familiarize themselves with this rule.

### **Item III—Incentives for Use of Performance-Based Contracting for Services (FAR Case 2004-004)**

This final rule amends the Federal Acquisition Regulation(FAR) to provide Governmentwide authority to treat performance-based contracts or task orders for services as commercial items, if certain conditions are met. Agencies must report on the use of this authority. This change implements sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) and is intended to promote the use of performance-based contracting.

### **Item IV—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004-035)**

This interim rule implements an amendment to 10 U. S. C. 2306a. The change requires that the exception from the requirement to obtain certified cost or pricing data for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than \$500, 000 or 5 percent of the total price of the contract, whichever is greater. Section 818 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005. This new policy applies only to acquisitions funded by DoD, NASA, or the Coast Guard, since the statute amends 10 U. S. C. 2306a, which only applies to DoD, NASA, and the Coast Guard. The new language does not apply to acquisitions funded by other than DoD, NASA, or the Coast Guard because Section 818 did not amend 41 U. S. C. 254b, which prohibits obtaining cost or pricing data for commercial items. However, the new policy applies to contracts awarded or task or delivery orders placed on behalf of DoD, NASA, or the Coast Guard by an official of the United States outside of those agencies, because the statutory requirement of Section 818 applies to the funds provided by DoD, NASA, or the Coast Guard.

### **Item V—Applicability of SDB and HUBZone Price Evaluation Factor(FAR Case 2003-015)**

This final rule removes some of the exceptions to the Small Disadvantaged Business and HUBZone preference programs. The contracting officer will now apply a price evaluation

adjustment to offers of eligible products in acquisitions subject to the Trade Agreements Act. This rule will have a beneficial impact on all domestic concerns, especially small entities that are small disadvantaged business concerns or HUBZone small business concerns.

#### **Item VI—Labor Standards for Contracts Involving Construction(FAR Case 2002-004)**

This final rule implements in the FAR the DoL rule revising the terms “construction, prosecution, completion or repair” (29CFR 5. 2(j)) and “site of the work” (29 CFR 5. 2(l)). In addition, the Councils have clarified several definitions relating to labor standards for contracts involving construction and made requirements for flow down of labor clauses more precise.

The most significant impact of this rule is that contractors must pay Davis-Bacon Act wages at a secondary site of the work, if a significant portion of the work is to be constructed at that site and the site meets the other criteria specified in the rule. When transporting portions of the building or work between the secondary site of the work and the primary site of the work, the wages for the primary site of the work are applicable. The contracting officer must coordinate with the Department of Labor when there is any uncertainty as to whether a work site is a secondary site of the work.

#### **Item VII—Deferred Compensation and Postretirement Benefits Other Than Pensions (FAR Case 2001-031)**

This final rule amends the FAR by revising paragraph (k), Deferred compensation other than pensions, and paragraph (o), Postretirement benefits other than pensions, of FAR 31. 205-6, Compensation for personal services, cost principle. Changes to paragraph (k) include: deletion of language that duplicates definitions provided in FAR 31. 001, elimination of obsolete coverage, and use of terminology consistent with Cost Accounting Standards. Changes to paragraph (o) include: moving and revising language in (o)(3) through (o)(5) to (o)(2)(iii) because these requirements only apply to accrual costing other than terminal funding. In addition, new coverage is added to the related contract clause at FAR 52. 215-18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, specifying the method of recovery of refunds and credits. The rule revises the cost principle and contract clause by improving clarity and structure, and removing unnecessary and duplicative language.

The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, e.g. , price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

#### **Item VIII—Gains and Losses (FAR Case 2004-005)**

This final rule amends FAR 31. 205-16 to address the timing of the gain or loss recognition of sale and leaseback arrangements of contractor depreciable property or other capital assets. The final rule defines the disposition date for a sale leaseback arrangement as the date the contractor begins to incur an obligation for lease or rental costs. Contracting officers, auditors, and contractors with responsibilities related to allowable cost determinations involving sale and

leaseback arrangements of contractor depreciable property or other capital assets will be impacted by new policies governing that area.

**APRIL 11, 2005**

**NUMBER 2005-03**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive materials contained in FAC 2005-03 are effective April 11, 2005.

**Item I—Purchases From Federal Prison Industries—Requirement for Market Research (FAR Case 2003-023) (Interim)**

This interim rule updates and clarifies procedures for purchase of items from Federal Prison Industries (FPI). The changes include—

- Establishment of a permanent requirement for market research and a comparability determination before purchasing an item of supply listed in the FPI Schedule. For civilian agencies, this requirement previously applied only to purchases made using fiscal year 2004 appropriated funds. Section 637 of Division H of the Consolidated Appropriations Act, 2005, made this requirement permanent for all Federal agencies.
- Clarification that, if a solicitation is available through the Governmentwide point of entry (FedBizOpps), it is not necessary to provide a separate copy of the solicitation to FPI.
- Clarification that, if an agency determines that an FPI item provides the best value to the Government as a result of FPI's response to a competitive solicitation, the agency must purchase the item from FPI using the ordering procedures at FPI's website.

**Item II—Section 508 Micropurchase Exemption (FAR Case 2004-020)**

The interim rule published on October 5, 2004, is converted to a final rule without change. This rule extends the Electronic and Information Technology (Section 508) micropurchase exception to April 1, 2005. This rule is of special interest to contracting officers and other individuals designated in accordance with FAR 1. 603-3. All micropurchases made on and after April 1, 2005, must comply with the requirements of Section

508. Micropurchases are subject to the same exemption provision as larger dollar buys, as articulated in FAR 39. 204.

**Item III—Technical Amendments**

Editorial changes are made at FAR 52. 212-5, 52. 213-4, 52. 219-18, and 52. 225-13, in order to update references.

**MARCH 23, 2005**

**NUMBER 2005-02**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-02 are effective March 23, 2005.

**Procurement Program for Service-Disabled Veteran-Owned Small Business Concerns (FAR Case 2004-002)**

This final rule provides for set-aside and sole source procurement authority for service-disabled veteran-owned small business (SDVOSB) concerns. It amends the Federal Acquisition Regulation (FAR) interim rule that was published in the Federal Register at 69 FR 25274, May 5, 2004, to implement Section 308 of the Veterans Benefits Act of 2003, Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans (Pub. L. 108-183). The interim rule provided that contracting officers may: (1) award contracts on the basis of competition restricted to service-disabled veteran-owned small businesses (SDVOSB) if there is a reasonable expectation that two or more SDVOSB concerns will submit offers and that the award can be made at a fair market price, or (2) award a sole source contract to a responsible SDVOSB concern when there is not a reasonable expectation that two or more SDVOSB concerns would offer, the anticipated contract price (including options) will not exceed \$5 million (for manufacturing) or \$3 million otherwise, and the contract award can be made at a fair and reasonable price. This final rule is published in conjunction with two rules published by the Small Business Administration (SBA).

**MARCH 9, 2005****NUMBER 2005-01**

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive materials contained in FAC 2005-01 are effective March 9, 2005, except for Items III, V, and VI, which are effective April 8, 2005.

**Item I—Improvements in Contracting for Architect-Engineer Services (Interim) (FAR Case 2004-001)**

This interim rule is of particular interest to contracting officers who acquire architect-engineer services. It clarifies to contracting officers that architect-engineer services offered under multiple award schedule contracts or under Federal Governmentwide task and delivery order contracts must—

- Be performed under the supervision of a licensed professional architect or engineer; and
- Be awarded in accordance with the quality-based selection procedures in FAR Subpart 36. 6.

In addition, the rule clarifies to contracting officers that task orders issued under an indefinite delivery contract must be issued using the procedures in FAR Subpart 36. 6 if the services being acquired specify, substantially or to a dominant extent, the performance of architect-engineer services. This rule implements section 1427 of the Services Acquisition Reform Act of 2003 (Pub. L. 108-136).

**Item II—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004-037) (Interim)**

This interim rule amends the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U. S. Coast Guard from \$50, 000, 000 to \$75, 000, 000. This change implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U. S. C. 2304(f)(1)(B) (Public Law 108-375). This reduces the administrative burden of approving a justification for other than full and open competition by allowing the head of the procuring activity in DoD, NASA, or the Coast Guard to approve justifications up to \$75 million. In addition to this change, FAR 6. 304(a)(3)(ii) is corrected to replace the outdated GS-16reference with “a grade above GS-15.”

**Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program(FAR Case 2004-034)**

This final rule amends the Federal Acquisition Regulation (FAR) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5, 000, 000 (\$10, 000, 000 for acquisitions in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack). This change implements section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104-106). The statute allows continued reduction of the burden on contracting officers and

industry when acquiring commercial items or items treated as commercial items in accordance with 12. 102(f)(1).

#### **Item IV—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004-036) (Interim)**

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19. 10, Small Business Competitiveness Demonstration Program, to add two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to this program. This amendment implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U. S. C. 644 note). This rule provides unrestricted competition in acquisitions of landscaping and pest control services.

#### **Item V—Nonavailable Articles—Policy (FAR Case 2003-021)**

This final rule addresses Congressional concerns regarding appropriate use of the list of domestically nonavailable items at FAR 25. 104(a). This final rule primarily impacts contracting officers who purchase items that are on the list, or items that contain an item on the list as a significant component. The final rule clarifies that being on the list does not mean that an item is completely nonavailable from U. S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the final rule emphasizes the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

#### **Item VI—Cost Accounting Standards Administration (FAR Case 1999-025)**

This final rule amends the FAR by revising Part 30, Cost Accounting Standards Administration, and the related contract clause at FAR 52. 230-6, Administration of Cost Accounting Standards. In addition, a new contract clause is added at FAR 52. 230-7, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The case was initiated by OUSD (AT&L) DPAP to address the CAS cost-impact process. The rule is of particular importance to contracting officers and contractors who negotiate and administer CAS-covered contracts and subcontracts in accordance with FAR Part 30.

#### **Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003-024) (Interim)**

This interim rule affects contractors that have cost-reimbursement contracts with the Department of Defense, Coast Guard, or NASA. It amends FAR 44. 201-2, Advance Notification Requirements, under cost-reimbursement contracts so that contractors that maintain a purchasing system approved by the contracting officer for the contract do not have to notify the agency before the award of any—

- Cost-plus-fixed-fee subcontract; or
- Fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

This rule implements section 842 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

**Item VIII—Use of FAR Clause 52. 244-6, Subcontracts for Commercial Items (FAR Case 2002-021)**

This final rule revises FAR 44. 403 by requiring the use of the clause at 52. 244-6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items. The revised clause prescription clarifies to contracting officers who acquire construction that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items. This rule does not make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

**Item IX—Technical Amendments**

Editorial changes are made at FAR 28. 203-3(d), 31. 101, 42. 203, and 52. 225-13(b) in order to update references.