

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Circular 2005–05;
Introduction**

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

ACTION: Summary presentation of interim and final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–05. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.acqnet.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–05 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.acqnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Definition of Information Technology (Interim)	2004–030	Davis.
II	Documentation Requirement for Limited Sources under Federal Supply Schedules	2005–004	Nelson.
III	Payment Withholding	2004–003	Olson.
IV	Confirmation of HUBZone Certification (Interim)	2005–009	Cundiff.
V	Government Property Rental and Special Tooling	2002–015	Parnell.
VI	Technical Amendment.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–05 amends the FAR as specified below:

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.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

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

Dated: July 15, 2005.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: July 19, 2005.

Patricia A. Brooks,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: July 14, 2005.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005-05; FAR Case 2004-030; Item I]

RIN 9000-AK21

Federal Acquisition Regulation; Definition of Information Technology

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of "information technology" to reflect the changes to the definition resulting from the enactment of Public Law 108-

199, Consolidated Appropriations Act, 2004. 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(6), to add "analysis" and "evaluation" and to clarify the term "ancillary equipment."

DATES: *Effective Date:* July 27, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before September 26, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-05, FAR case 2004-030, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.
- E-mail: farcase.2004-030@gsa.gov. Include FAC 2005-05, FAR case 2004-030, in the subject line of the message.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-05, FAR case 2004-030, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219-0202, or Mr. Bill Sain, Procurement Analyst, at (703) 602-0293. Please cite FAC 2005-05, FAR case 2004-030.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements the changes to the FAR definition of "information technology" resulting from the enactment of Section 535(b), Division F, of Public Law 108-199, Consolidated Appropriations Act, 2004. The public law was effective January 23, 2004. The rule modifies the definition of "information technology" at FAR 2.101(b) to include "analysis" and "evaluation." The rule also modifies the term "information technology" to include peripheral equipment designed

to be controlled by the central processing unit of a computer, and clarifies the term "ancillary equipment" to include imaging peripherals, input, output, and storage devices necessary for security and surveillance.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the interim rule revises the definition of information technology resulting from the enactment of Public Law 108-199, Consolidated Appropriation Act 2004. This is a minor technical change to the definition. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. However, the Councils will consider comments from small entities concerning the affected FAR Part 2 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-05, FAR case 2004-030), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the changes resulting from the enactment of Section 535(b), Division F, of Public Law 108-199, Consolidated Appropriations Act, 2004, that were effective January 23, 2004. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.