

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR–2006–0023]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–09; Introduction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final and interim rules, and technical amendments and corrections.

**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) 2005–09. 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:** 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 2005–09 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.acqnet.gov/far>. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

Item	Subject	FAR case	FAR Analyst
I .....	Federal Technical Data Solution (FedTeDS) .....	2004–007	Zaffos.
II .....	Definition of Information Technology .....	2004–030	Davis.
III .....	OMB Circular A–76 .....	2004–021	Zaffos.
IV .....	Combating Trafficking in Persons (Interim) .....	2005–012	Clark.
V .....	Confirmation of HUBZone Certification .....	2005–009	Cundiff.
VI .....	Expiration of the Price Evaluation Adjustment .....	2005–002	Cundiff.
VII .....	Removal of Sanctions Against Certain European Union Member States (Interim) .....	2005–045	Clark.
VIII .....	Free Trade Agreements Morocco (Interim) .....	2006–001	Clark.
IX .....	Fast Payment Procedures .....	2004–031	Olson.
X .....	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 2005–09 amends the FAR as specified below:

**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) Web site.

**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)**

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)**

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)**

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”.

Dated: April 12, 2006.

**Gerald Zaffos,**

*Director, Contract Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005–09 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 2005–09 is effective May 19, 2006, except for Items II, IV, V, VI, VII, VIII, and X which are effective April 19, 2006.

Dated: April 8, 2006.

**Shay D. Assad,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: April 12, 2006.

**Roger D. Waldron,**

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

Dated: April 5, 2006.

**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 Parts 2, 5, and 7**

[FAC 2005–09; FAR Case 2004–007; Item I; Docket FAR–2006–0020]

RIN 9000–AK08

**Federal Acquisition Regulation; FAR Case 2004–007, Federal Technical Data Solution (FedTeDS)**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require contracting officers to use the Federal Technical Data Solution (FedTeDS) for electronic posting of solicitation-related materials that require control over availability or distribution unless certain exceptions apply.

**DATES:** Effective Date: May 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2005–09, FAR case 2004–007.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 63436 on November 1, 2004. The 60-day comment period for the proposed rule ended January 3, 2005. Sixteen comments were received from seven commenters. Some of the comments merely agreed with the concept of FedTeDS, others pointed out areas of concern. The substantive comments are discussed below.

**Public Comments**

1. *Comment:* FedTeDS will reduce competition on typical large construction projects. By restricting document access to those who are registered in CCR and have an access code, the use of FedTeDS will result in