

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2007–0002, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–19; 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.

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) 2005–19. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://regulations.gov>.

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

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–19 and the specific FAR case number(s). For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–19

Item	Subject	FAR case	Analyst
I	Reporting of Purchases from Overseas Sources	2005–034	Murphy.
II	Changes to Lobbying Restrictions	2005–035	Woodson.
III	Online Representations and Certifications Application Archiving Capability	2005–025	Woodson.
IV	Requirement to Purchase Approved Authentication Products and Services	2005–017	Jackson.
V	Combating Trafficking in Persons (Interim)	2005–012	Woodson.
VI	Emergency Acquisitions	2005–038	Clark.
VII	Small Business Credit for Alaska Native Corporations and Indian Tribes	2004–017	Cundiff.
VIII	New Designated Countries—Bulgaria, Dominican Republic, and Romania (Interim)	2006–028	Murphy.
IX	Online Representations and Certifications Application Review (Interim)	2006–025	Woodson.
X	Free Trade Agreements— El Salvador, Honduras, and Nicaragua	2006–006	Murphy.
XI	Free Trade Agreements—Bahrain and Guatemala	2006–017	Murphy.
XII	Accepting and Dispensing of \$1 Coin (Interim)	2006–027	Jackson.
XIII	Technical Amendments		

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 2005–19 amends the FAR as specified below:

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 FR 57362, 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 FR 38247, 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 FR 36935, 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 FR 67776, 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.

Dated: July 30, 2007

Al Matera,

Acting Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–19 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 2005–19 is effective August 17, 2007, except for Items II, IV, VI, and VII which are effective September 17, 2007.

Dated: July 25, 2007.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: July 18, 2007.

George Barclay,

Acting Senior Procurement Executive, General Services Administration.

Dated: July 17, 2007.

Sheryl Goddard,

Acting 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 1, 25, and 52**

[FAC 2005–19; FAR Case 2005–034; Item I; Docket 2006–0020; Sequence 9]

RIN 9000–AK52

Federal Acquisition Regulation; FAR Case 2005–034, Reporting of Purchases from Overseas Sources

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 to adopt as a final rule with changes the interim rule published in the **Federal Register** at 71 FR 57375, September 28, 2006. This final rule implements 41 U.S.C. 10a, Buy American Act, as amended by Section 8306 of Public Law 110–28.

DATES: Effective Date: August 17, 2007.

FOR FURTHER INFORMATION CONTACT:

Contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–19, FAR case 2005–034.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule implements 41 U.S.C. 10a, which 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 provision at 52.225–18 requests from offerors necessary data regarding place of manufacture.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 57375, September 28, 2006. The 60–day comment period on the interim rule ended on November 27, 2006. The Councils received one public comment.

Comment: The respondent did not suggest any changes to the interim rule. Rather, the comment related to a statement in the **Federal Register** notice that the amendment is mandatory for solicitations issued and contracts awarded on or after October 1, 2006. The respondent considers this statement

to be incorrect because the interim rule prescribes only a solicitation provision, which is to be incorporated in solicitations, not contracts.

Response: The **Federal Register** notice states that the amendment is mandatory for solicitations issued and contracts awarded on or after October 1, 2006. The respondent is correct that the solicitation provision is used only in solicitations, not contracts. However, other aspects of the interim rule are applicable to contracts. The contracting officer is required to enter into the FPDS data on all contracts awarded on or after October 1, 2006, even if the solicitation did not include the new FAR provision at 52.225–18, Place of Manufacture.

Section 8306 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28), signed on May 25, 2007, amended the Buy American Act (41 U.S.C. 10a) to include an agency reporting requirement for acquisition of articles manufactured outside the United States. Therefore, the statutory citation at FAR 25.004(a) is amended in this final rule to cite 41 U.S.C. 10a rather than 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) and similar sections in subsequent appropriations acts.

As a conforming amendment, it is necessary to include the new Office of Management and Budget (OMB) Control Number in FAR 1.106. In addition, a technical correction deletes OMB Control Number 9000–0023 as a control number associated with FAR clause 52.225–2, because 52.225–2 no longer implements the Balance of Payments Program and OMB Control Number 9000–0023 has expired.

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

DoD, GSA, and NASA certify that this final rule will not 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 this final rule does not change the rules for buying, it only amends the statutory citation and finalizes an information collection requirement. It does not have a significant economic impact to ask offerors of manufactured end products