

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 4, 7, 9, 13, 18, 25, 26,
and 52**[FAC 2005–55; FAR Case 2011–021; Item
II; Docket 2011–0021, Sequence 1]

RIN 9000–AM14

**Federal Acquisition Regulation;
Transition to the System for Award
Management (SAM)****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Final rule.**SUMMARY:** DoD, GSA, and NASA are
issuing a final rule amending the
Federal Acquisition Regulation (FAR) to
update certain definitions and clauses
pertaining to three procurement systems
included in the Integrated Acquisition
Environment—the Central Contractor
Registration database, the Excluded
Parties List System, and the Online
Representations and Certifications
Application. These three Integrated
Acquisition Environment systems and
the Disaster Response Registry will now
be accessed through a single Web site.**DATES:** *Effective Date:* February 2, 2012.
FOR FURTHER INFORMATION CONTACT: Mr.
Edward Loeb, Procurement Analyst, at
(202) 501–0650, for clarification of
content. For information pertaining to
status or publication schedules, contact
the Regulatory Secretariat at (202) 501–
4755. Please cite FAC 2005–55, FAR
Case 2011–021.**SUPPLEMENTARY INFORMATION:****I. Background**

The Integrated Acquisition Environment (IAE) is an electronic-Government initiative. The IAE is aggregating disparate Federal acquisition content, which is currently housed in numerous online systems, by providing one Web site for regulations, systems, resources, opportunities, and training. The Web site at <https://www.acquisition.gov> was designed to create an easily navigable resource that is both more efficient and transparent.

The transition of the IAE to the new System for Award Management (SAM) architecture has begun. This effort will transition the Central Contractor Registration (CCR) database, the Excluded Parties List System (EPLS),

and the Online Representations and Certifications Application (ORCA) to the new architecture. This case provides the first step in updating the FAR for these changes, and it updates the Web addresses present in the FAR for these systems as being accessible through <https://www.acquisition.gov>. This rule also amends the FAR to provide for accessing the Disaster Response Registry through <https://www.acquisition.gov>. As the transition to SAM progresses, future FAR cases are anticipated to change the current names of the systems to SAM, as well as to begin the transition of the remaining IAE systems.

II. FAR Changes

This case makes the following administrative changes to the FAR:

- Deletes the definition at 2.101 for “business partner network,” which is no longer necessary in the SAM architecture.
- Deletes reference to “business partner network” at 4.1100, Scope, which is no longer necessary in the SAM architecture.
- Revises the relevant database references shown throughout the FAR, to show the new Web site address at <https://www.acquisition.gov>. Databases include the CCR, EPLS, ORCA, and Disaster Response Registry.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and does not require publication for public comment.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that

require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 2, 4, 7,
9, 13, 18, 25, 26, and 52**

Government procurement.

Dated: December 21, 2011.

Laura Auletta,*Director, Office of Governmentwide
Acquisition Policy, Office of Acquisition
Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA
amend 48 CFR parts 2, 4, 7, 9, 13, 18,
25, 26, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 2, 4, 7, 9, 13, 18, 25, 26, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C.
chapter 137; and 42 U.S.C. 2473(c).

**PART 2—DEFINITIONS OF WORDS
AND TERMS**

- 2. Amend section 2.101, in paragraph (b)(2) by removing the definition “Business Partner Network (BPN)” and revising the definitions “Disaster Response Registry” and “Online Representations and Certifications Application (ORCA)” to read as follows:

2.101 Definitions.

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Disaster Response Registry means a voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities established in accordance with 6 U.S.C. 796, Registry of Disaster Response Contractors. The Registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas. The Registry is accessed via <https://www.acquisition.gov> and alternately through the FEMA Web site at <http://www.fema.gov/business/index.shtm>. (See 26.205.)

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Online Representations and Certifications Application (ORCA) means the primary Government repository for contractor submitted representations and certifications required for the conduct of business with the Government. Access ORCA via <https://www.acquisition.gov>.

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PART 4—ADMINISTRATIVE MATTERS

4.1100 [Amended]

■ 3. Amend section 4.1100 by removing from the introductory text “, a part of the Business Partner Network (BPN)”.

4.1103 [Amended]

4. Amend section 4.1103 by removing from paragraph (a)(2)(i) “<http://www.ccr.gov>” and adding “<https://www.acquisition.gov>” in its place.

4.1104 [Amended]

■ 5. Amend section 4.1104 by removing “at www.ccr.gov” and adding “via <https://www.acquisition.gov>” in its place.

4.1201 [Amended]

■ 6. Amend section 4.1201 by removing from paragraph (a) “<http://orca.bpn.gov>” and adding “ORCA accessed via <https://www.acquisition.gov>” in its place.

PART 7—ACQUISITION PLANNING

7.103 [Amended]

■ 7. Amend section 7.103 by removing from paragraph (y) “at www.ccr.gov” and adding “via <https://www.acquisition.gov>” in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.404 [Amended]

■ 8. Amend section 9.404 by removing from paragraph (d) “at <http://epls.gov>” and adding “via <https://www.acquisition.gov>” in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.102 [Amended]

■ 9. Amend section 13.102 by removing from paragraph (a) “at <http://www.ccr.gov>” and adding “via <https://www.acquisition.gov>” in its place.

PART 18—EMERGENCY ACQUISITIONS

■ 10. Revise section 18.102 to read as follows:

18.102 Central contractor registration.

Contractors are not required to be registered in the Central Contractor Registration (CCR) database for contracts awarded to support unusual and compelling needs or emergency acquisitions. (See 4.1102). However, contractors are required to register with CCR in order to gain access to the Disaster Response Registry. Contracting officers shall consult the Disaster

Response Registry via <https://www.acquisition.gov> to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

PART 25—FOREIGN ACQUISITION

25.703–3 [Amended]

■ 11. Amend section 25.703–3 in paragraph (a) by removing “at <https://www.epls.gov>” and adding “via <https://www.acquisition.gov>” in its place.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.205 [Amended]

■ 12. Amend section 26.205 by removing from paragraph (a) “at www.ccr.gov” and adding “via <https://www.acquisition.gov>” in its place; and by removing from paragraph (b) “on the CCR Web page” and adding “, which can be accessed via <https://www.acquisition.gov>.” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Amend section 52.204–7 by revising the date of the clause; and removing from paragraph (h) “the Internet at <http://www.ccr.gov>” and adding “CCR accessed through <https://www.acquisition.gov>” in its place. The revised text reads as follows:

52.204–7 Central Contractor Registration.

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Central Contractor Registration (FEB 2012)

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■ 14. Amend section 52.204–8 by revising the date of the provision; and removing from paragraph (d) “at <http://orca.bpn.gov>” and adding “accessed through <https://www.acquisition.gov>” in its place. The revised text reads as follows:

52.204–8 Annual Representations and Certifications.

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Annual Representations and Certifications (FEB 2012)

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■ 15. Amend section 52.204–10 by revising the date of the clause; and removing from paragraph (c)(2) “at <http://www.ccr.gov>” and adding “in the Central Contractor Registration (CCR) database via <https://www.acquisition.gov>” in its place. The revised text reads as follows:

52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.

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Reporting Executive Compensation and First-tier Subcontract Awards (FEB 2012)

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■ 16. Amend section 52.209–7 by revising the date of the provision; and removing from paragraph (d) “at <http://www.ccr.gov>” and adding “via <https://www.acquisition.gov>”. The revised text reads as follows:

52.209–7 Information Regarding Responsibility Matters.

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Information Regarding Responsibility Matters (FEB 2012)

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■ 17. Amend section 52.209–9 by revising the date of the clause; and removing from paragraph (a) “at <http://www.ccr.gov>” and adding “via <https://www.acquisition.gov>” in its place. The revised text reads as follows:

52.209–9 Updates of Publicly Available Information Regarding Responsibility Matters.

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Updates of Publicly Available Information Regarding Responsibility Matters (FEB 2012)

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■ 18. Amend section 52.212–1 by revising the date of the provision; and removing from paragraph (k) “the Internet at <http://www.ccr.gov>” and adding “the CCR database accessed through <https://www.acquisition.gov>” in its place. The revised text reads as follows:

52.212–1 Instructions to Offerors—Commercial Items.

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Instructions to Offerors—Commercial Items (FEB 2012)

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■ 19. Amend section 52.212–3 by—
■ a. Revising the date of the provision;
■ b. Removing from the introductory paragraph “at <http://orca.bpn.gov>” and adding “via <https://www.acquisition.gov>” in its place; and
■ c. Removing from paragraph (b)(2) “at <http://orca.bpn.gov>” and adding “accessed through <https://www.acquisition.gov>” in its place; and removing from the last paragraph the word “posted” and adding “posted electronically” in its place. The revised text reads as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

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Offeror Representations and Certifications—Commercial Items (FEB 2012)

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■ 20. Amend section 52.212-4 by revising the date of the clause; and removing from paragraph (t)(4) “via the Internet at <http://www.ccr.gov>” and adding “via CCR accessed through <https://www.acquisition.gov>” in its place. The revised text reads as follows:

52.212-4 Contract Terms and Conditions—Commercial Items.

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Contract Terms and Conditions—Commercial Items (FEB 2012)

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[FR Doc. 2011-33414 Filed 12-30-11; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 5, 6, 8, 11, 13, 16, 18, and 36**

[FAC 2005-55; FAR Case 2005-037; Item III; Docket 2006-0020, Sequence 26]

RIN 9000-AK55

Federal Acquisition Regulation; Brand-Name Specifications

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Management and Budget memoranda on brand-name specifications.

DATES: *Effective Date:* February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219-1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-55, FAR Case 2005-037.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 57357 on September 28, 2006, to implement Office of Management and Budget (OMB) memoranda and policies on the use of brand-name specifications. Eight respondents submitted 32 comments in response to the interim rule. The public comments were considered in development of this final rule.

Prior to the interim rule, on April 11, 2005, OMB issued a memorandum on the use of brand-name specifications that was designed to reinforce the need to maintain vendor- and technology-neutral contract specifications and provide for maximum competition by limiting the use of brand-name specifications. OMB encouraged agencies to mitigate brand-name usage and publicize the justification for using brand-names in solicitations. OMB issued a second memorandum on April 17, 2006, providing additional implementation guidance for publication of brand-name justifications.

Subsequent to the interim rule, OMB issued two additional memoranda addressing the use of brand-name specifications. One, entitled “Appropriate Use of Brand Name or Equal Purchase Descriptions,” dated November 28, 2007, reminded agencies of the need to comply with the requirements included in the interim rule and establish internal controls to monitor compliance. The last memorandum, published December 19, 2007, entitled “Reminder-Ensuring Competition When Acquiring Information Technology and Using Common Security Configurations,” summarized the FAR requirements on the use of brand-name purchase descriptions and again asked agencies to establish internal controls. All four of the OMB memoranda were considered in developing this final rule.

However, the need to stabilize the FAR baseline because of changes to be made by other pending FAR cases has delayed publication of this final rule. Publication in the **Federal Register** at 76 FR 14548 on March 16, 2011, of the interim rule for FAR Case 2007-012, Requirements for Acquisitions Pursuant to Multiple-Award Contracts, enabled the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) to move ahead with this final rule. Some of the changes made to the interim rule by this final rule are due solely to the revised baseline.

This final rule amends FAR subparts 6.3, 8.4, 13.1, 13.5, and 16.5 to clarify that when applicable, the documentation or justification and posting requirements for brand-name items only apply to the portion of the acquisition that requires the brand-name item. FAR subparts 8.4 and 16.5 are amended to require screening of the brand-name justifications for contractor proprietary data, and FAR subpart 16.5 is amended to require contracting officers to post the justification for an order peculiar to one manufacturer under indefinite-delivery contracts.

II. Discussion and Analysis

The Councils reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. What To Post

Comments: The interim rule specifically requested comments on whether agencies should be required to post brand-name justifications (a) For orders against indefinite-delivery contracts, including Governmentwide Acquisition Contracts (GWACs), (b) for orders against SmartBUY agreements and other strategic sourcing vehicles, and (c) to renew software-license agreements that are required to receive software updates. Several respondents addressed these questions as follows.

Most respondents expressed a strong belief that all Government procurements should be subject to the same brand-name-or-equal rules, at the basic-contract level and at the order level. One respondent stated that a single posting requirement will go a long way toward leveling the playing field. Other respondents believed that it would be unfair to allow agencies to avoid the brand-name justification rule by ordering against indefinite-delivery contracts.

One respondent distinguished between an agency-only indefinite-delivery contract and GWACs, which can be used by multiple agencies. The respondent did not think that an agency should be required to post brand-name justifications for orders under an internal indefinite-delivery contract, because all requirements should have been met at the time of posting the initial requirement for the basic indefinite-delivery contract, even if a competitive solicitation leads to a *de facto* brand-name indefinite-delivery contract. Further, this respondent read the FAR to contain a loophole that allows an ordering agency to avoid the posting requirements, as well as any