



Federal Register

**Thursday,
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Part IV

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Parts 1, 2, 3, et. al.
Federal Acquisition Regulations; Final
Rules**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2006–0023, Sequence 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–13; 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) 2005-13. 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.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 or subject area. Please cite FAC 2005-13 and 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 2005–13

Item	Subject	FAR case	Analyst
*I	Implement OMB Policy on the Use of Brand Name Specifications (Interim)	2005–037	Davis.
*II	Information Technology Security	2004–018	Davis.
III	Online Representations and Certifications Application (ORCA) Archiving Capability (Interim)	2005–025	Woodson.
*IV	Inflation Adjustment of Acquisition-Related Thresholds	2004–033	Jackson.
V	Trade Agreements—Thresholds	2005–030	Parnell.
VI	Reporting of Purchases from Overseas Sources (Interim)	2005–034	Olson.
*VII	Exception to the Buy American Act for Commercial Information Technology	2005–022	Olson.
VIII	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 2005–13 amends the FAR as specified below:

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 FR 864, 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 FR 223, 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.

Dated: September 19, 2006.

Ralph De Stefano,
Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-13 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 2005-13 is effective September 28, 2006.

Dated: September 19, 2006.

Roger D. Waldron,
Acting Senior Procurement Executive,
General Services Administration.

Dated: September 8, 2006.

Shay D. Assad,
Director, Defense Procurement and Acquisition Policy.

Dated: September 12, 2006.

Thomas 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 5, 6, 8, 11, and 13

[FAC 2005-13; FAR Case 2005-037; Item I; Docket 2006-0020, Sequence 10]

RIN 9000-AK55

Federal Acquisition Regulation; FAR Case 2005-037, Implement OMB Policy on the Use of Brand Name Specifications

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 to amend the Federal Acquisition Regulation (FAR) to require agencies to publish on the Governmentwide point of entry (GPE) or e-Buy the documentation required by