

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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BILLING CODE 6820-EP-S

## 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](mailto: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.

List of Subjects in 48 CFR Part 2

Government procurement.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 2 as set forth below:

PART 2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR part 2 is revised to read as follows:

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

2. In section 2.101, amend paragraph (b), in the definition "Information technology," by adding the words "analysis, evaluation," after the word "storage," revising paragraph (2) of the definition; and in paragraph (3)(ii), adding "analysis, evaluation," after the word "storage,". The revised text reads as follows:

2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

Information technology \* \* \*

(1) \* \* \*

(2) The term "information technology" includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

\* \* \* \* \*

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2005-05; FAR Case 2005-004; Item II]

RIN 9000-AK23

Federal Acquisition Regulation; Documentation Requirement for Limited Sources Under Federal Supply Schedules

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 make editorial and restructuring changes to clarify the procedures when an ordering activity limits consideration of schedule contractors.

DATES: Effective Date: July 27, 2005.

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. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2005-05, FAR case 2005-004.

SUPPLEMENTARY INFORMATION:

A. Background

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 Councils agreed that the changes made did not substantively change the intent of the subpart but are merely a clarification and, therefore, publication for public comment is not required.

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 Regulatory Flexibility Act does not apply to this rule. This final rule

does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 8 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 2005-004), 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.

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 8 as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for 48 CFR part 8 is revised to read as follows:

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

2. Amend section 8.401 by revising the definition "Multiple Award Schedule (MAS)" to read as follows:

8.401 Definitions.

\* \* \* \* \*

Multiple Award Schedule (MAS) means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more than one supplier, at varying prices. The primary statutory authorities for the MAS program are Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, et seq.) and Title 40 U.S.C. 501, Services for Executive Agencies.

\* \* \* \* \*

3. Amend section 8.405-1 in the second sentence of the introductory text of paragraph (c) by adding "at least three schedule contractors through" after the word "surveying"; and adding paragraph (e) to read as follows:

8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

\* \* \* \* \*

(e) Minimum documentation. The ordering activity shall document—