

**FAC 2005-30 is summarized below and includes whether any DOE supplemental guidance will be issued.**

**Item I – Federal Procurement Data System (FPDS)**

(FAR Case 2004-038) (Final) 48 CFR Parts 1, 2, 4, 12, and 52  
Effective date: February 17, 2009.

This final rule amends the Federal Acquisition Regulation (FAR) Subpart 4.6 to revise the process for reporting contract actions to the Federal Procurement Data System (FPDS). The rule establishes FPDS as the single authoritative source of all procurement data for a host of applications and reports, such as the Central Contractor Registration (CCR), the Electronic Subcontracting Reporting System (eSRS), the Small Business Goaling Report (SRGR), and Resource Conservation and Recovery Act (RCRA) data. The rule requires Contracting Officers to verify the accuracy of contract award data prior to reporting the data in FPDS. The rule does not require any reporting by the vendor community, as the FPDS reporting requirement is accomplished by Government contracting activities. *The DOE Acquisition Guide, Chapter 4.1, will be updated. This Guide contains procedures to implement statutory reporting requirements for collecting data on procurement and financial assistance actions.*

**Item II – Commercially Available Off-the-Shelf (COTS) Items**

(FAR Case 2000-305) (Final) 48 CFR Parts 2, 3, 12, 23, 25, and 52  
Effective date: February 17, 2009

This final rule amends the FAR to implement Section 4203 of the Clinger-Cohen Act of 1996 (41 U.S.C. 431) with respect to the inapplicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf (COTS) items. A new FAR section 12.103 outlines the treatment of COTS items. This rule will reduce the burden on contractors that provide commercially available off-the-shelf EPA-designated products that contain recovered materials and contractors that provide construction materials or end products that are COTS items manufactured in the United States. Contracting officers will need to become acquainted with the new definition of “commercially available off-the-shelf item” and understand the revised definitions of “domestic end product” and “domestic construction material. *No additional DOE supplemental guidance will be issued.*

**Item III – Exemption of Certain Service Contracts from the Service Contract Act (SCA)**

(FAR Case 2001-004) (Final) 48 CFR Parts 4, 15, 17, 22, and 52  
Effective date: February 17, 2009

This rule finalizes, with changes, the interim rule that was published in the Federal Register at 72 FR 63076 on November 7, 2007. This rule is required to implement the U.S. Department of Labor’s final rule published in the Federal Register at 66 FR 5327 on

January 18, 2001, amending 29 CFR Part 4. This rule revises the current Service Contract Act (SCA) exemption in the FAR and adds an SCA exemption for contracts for certain additional services that meet specific criteria. The rule also adds to the Annual Representations and Certifications FAR clause at 52.204-8, the conditions under which each listed provision applies, or for the more complex cases, a check-off for the contracting officer to indicate whether the provision is applicable to the solicitation. The rule encourages broader participation of Government procurement by companies doing business in the commercial sector, and reinforces the Government's commitment to reduce Government unique terms and conditions, without compromising the purpose of the SCA to protect prevailing labor standards. *No additional DOE supplemental guidance will be issued.*

**Item IV – Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts-Section 844 of the National Defense Authorization Act for Fiscal Year 2008**

(FAR Case 2008-003) (Interim) 48 CFR Parts 5, 6, and 24  
Effective date: February 17, 2009

This interim rule amends FAR 6.305 to require agencies to make available for public inspection within 14 days after contract award the justification required by 6.303-1, on the website of the agency and at the governmentwide point of entry ([www.fedbizopps.gov](http://www.fedbizopps.gov)). In the case of a contract award permitted under FAR 6.302-2, the rule requires that the justification be posted within 30 days after contract award. The rule also requires that contracting officers carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. This rule implements Section 844 of the National Defense Authorization Act for Fiscal Year 2008.

*DOE supplemental guidance will be issued in an Acquisition Letter: The FEDBIZOPPS Justification and Approval (J&A) Enhancement at the website will be ready in April 2009. Meanwhile, users can upload a document containing the J&A and attach it to an existing notice as an amendment/modification to FEDBIZOPPS. The Head of the Contracting Activity shall ensure that the justification for other than full and competition (JOFOC) document is redacted and posted to its local website (or linked to the FEDBIZOPPS website) and uploaded to the FEDBIZOPPS website. Use the J&A and type of exception to full and open competition in the title of the document file, e.g., J&A6302-1, J&A6302-2. The contracting officers shall carefully screen a JOFOC for all contractor proprietary and other sensitive data and remove it if such data exists, including such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Also, the contracting officer shall be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in FAR 24.202 in determining whether other data should be removed.*

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*Before posting the JOFOC, the contracting officer shall coordinate the redacted JOFOC as needed with the local Counsel's Office and the local FOIA officer.*

**Item V – SAFETY Act: Implementation of DHS Regulations**

(FAR Case 2006-023) (Final) 48 CFR Parts 1, 7, 18, 28, 32, 33, 43, 50 and 52

Effective date: February 17, 2009

This final rule converts the interim rule published in the Federal Register at 72 FR 63027, November 7, 2007, to a final rule with changes. This final rule implements the SAFETY Act in the FAR. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the SAFETY Act is to ensure that the threat of liability does not deter potential manufacturers or sellers of antiterrorism technologies from developing, deploying, and commercializing technologies that could save lives.

*DOE Procurement guidance: As part of the Homeland Security Act of 2002, Public Law 107-296, Congress enacted several liability protections for providers of anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or Sellers of anti-terrorism technologies from developing and commercializing technologies that could significantly reduce the risks or mitigate the effects of large-scale terrorist events. The Act thus creates certain liability limitations for “claims arising out of, relating to, or resulting from an act of terrorism” where qualified anti-terrorism technologies have been deployed. The Act does not limit liability for harms caused by anti-terrorism technologies when no act of terrorism has occurred. Requiring activities shall review requirements to identify potential technologies that prevent, detect, identify, or deter acts of terrorism or limit the harm such acts might cause, and may be appropriate for SAFETY Act protections. In questionable cases, the agency shall consult with the Department of Homeland Security.*

**Item VI – Electronic Products Environmental Assessment Tool (EPEAT)**

(FAR Case 2006-030) (Final) 48 CFR Parts 11, 23, 39, and 52

Effective date: February 17, 2009

The Councils have adopted as final, without change, the interim rule that amended the FAR to require the use of the Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors pursuant to the Energy Policy Act of 2005 and Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.” The interim rule revised Subpart 23.7, and prescribed a clause at 52.223-16 (also included in 52.212-5 for acquisition of commercial items) in all solicitations and contracts for the acquisition of personal computer products, services

that require furnishing of personal computer products for use by the Government, and services for contractor operation of Government owned facilities. *DOE Procurement guidance: The Chief Information Officer is acquiring EPEAT certified Information Technology equipment above the required bronze level. Further instructions regarding the EPEAT Program will be found in Chapter 23 of the Acquisition Guide.*

**Item VII—Combating Trafficking in Persons**

(FAR Case 2005–012) (Final) 48 CFR Parts 12, 22, and 52

Effective date: February 17, 2009

This final rule implements Section 3(b) of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 (Combating Trafficking In Persons). TVPRA addresses the victimization of countless men, women, and children in the United States and abroad. The United States Government believes that its contractors can help combat trafficking in persons. The statute, codified at 22 U.S.C. 7104(g), requires that contracts contain a clause allowing the agency to terminate the contract if a contractor, contractor employees, subcontractor, or subcontractor employees engage in severe forms of trafficking in persons or procures a commercial sex act during the period of performance of the contract, or uses forced labor in the performance of the contract. The rule provides that the contracting officer may consider whether the contractor had a Trafficking in Persons awareness program at the time of a violation as a mitigating factor when determining remedies; and a website where the contractor may obtain additional information about Trafficking in Persons and examples of awareness programs. *No additional DOE supplemental guidance will be issued.*

**Item VIII—Trade Agreements—New Thresholds**

(FAR Case 2007–016) (Final) 48 CFR Parts 22, 25, and 52

Effective date: January 15, 2009

This final rule converts the interim rule published in the Federal Register at 73 FR 10962 on February 28, 2008, and amended at 73 FR 16747 on March 28, 2008, to a final rule without change. The rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements. *Acquisition letter 2008-06, Domestic and Foreign Procurement Preference Requirements, is being reviewed for any potential updates.*

**Item IX—Technical Amendment**

Final 48 CFR Part 15

Effective date: January 15, 2009

An editorial change is made at FAR 15.101–2. *No additional DOE supplemental guidance will be issued.*

Attachment 2 is the FAC 2005-30.