



Federal Register

**Monday,
April 11, 2005**

Part IV

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Chapter 1, et al.

**Federal Acquisition Regulations; Final and
Interim Rules**

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Circular 2005–03;
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.

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) 2005–03. 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.acqnet.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–03 and specific FAR case numbers. Interested parties may also visit our Web site at <http://www.acqnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Purchases From Federal Prison Industries—Requirement for Market Research (Interim)	2003–023	Nelson.
II	Section 508 Micropurchase Exemption	2004–020	Nelson.
III	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 2005–03 amends the FAR as specified below:

Item I—Purchases From Federal Prison Industries—Requirement for Market Research (FAR Case 2003–023) (Interim)

This interim rule updates and clarifies procedures for purchase of items from Federal Prison Industries (FPI). The changes include—

- Establishment of a permanent requirement for market research and a comparability determination before purchasing an item of supply listed in the FPI Schedule. For civilian agencies, this requirement previously applied only to purchases made using fiscal year 2004 appropriated funds. Section 637 of Division H of the Consolidated Appropriations Act, 2005, made this requirement permanent for all Federal agencies.

- Clarification that, if a solicitation is available through the Governmentwide point of entry (FedBizOpps), it is not necessary to provide a separate copy of the solicitation to FPI.

- Clarification that, if an agency determines that an FPI item provides the best value to the Government as a result of FPI's response to a competitive solicitation, the agency must purchase the item from FPI using the ordering procedures at FPI's website.

Item II—Section 508 Micropurchase Exemption (FAR Case 2004–020)

The interim rule published on October 5, 2004, is converted to a final rule without change. This rule extends the Electronic and Information Technology (Section 508) micropurchase exception to April 1, 2005. This rule is of special interest to contracting officers and other individuals designated in accordance with FAR 1.603–3. All micropurchases made on and after April 1, 2005, must comply with the requirements of Section 508. Micropurchases are subject to the same exemption provision as larger dollar buys, as articulated in FAR 39.204.

Item III—Technical Amendments

Editorial changes are made at FAR 52.212–5, 52.213–4, 52.219–18, and 52.225–13, in order to update references.

Dated: April 1, 2005.

Rodney P. Lantier,

Director, Contract Policy Division, General Services Administration.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-03 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 2005-03 is effective April 11, 2005.

Dated: March 30, 2005.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: March 25, 2005.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: March 23, 2005.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 05–6863 Filed 4–8–05; 8:45 am]

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 8 and 25

**[FAC 2005–03; FAR Case 2003–023;
Item I]**

RIN 9000–AJ91

**Federal Acquisition Regulation;
Purchases From Federal Prison
Industries—Requirement for Market
Research**

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 implement Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency, pursuant to Governmentwide procurement regulations issued pursuant to 41 U.S.C. 421(c)(1) that impose procedures, standards, and limitations of 10 U.S.C. 2410n.

DATES: *Effective Date:* April 11, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before June 10, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-03, FAR case 2003-023, 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.2003-023@gsa.gov. Include FAC 2005-03, FAR case 2003-023, 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 2005-03, FAR case 2003-023, 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. The TTY Federal Relay Number for further information is 1-800-877-8973. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-

1900. Please cite FAC 2005-03, FAR case 2003-023.

SUPPLEMENTARY INFORMATION:

A. Background

Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Public Law 108-447), provides that none of the funds made available under that or any other Act for fiscal year 2005 and each fiscal year thereafter shall be expended for the purchase of a product or service offered by Federal Prison Industries, Inc. (FPI), unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency pursuant to Governmentwide procurement regulations issued pursuant to 41 U.S.C. 421(c)(1) that impose procedures, standards, and limitations of 10 U.S.C. 2410n. Section 637 of Division F of the Consolidated Appropriations Act, 2004 (Public Law 108-199), contained a similar requirement that applied only to fiscal year 2004 funds.

DoD, GSA, and NASA published an interim rule at 69 FR 16147 on March 26, 2004, to implement the fiscal year 2004 appropriations act provision. Twelve sources submitted comments on the interim rule. A discussion of the comments is provided below. This second interim rule incorporates changes made as a result of public comments, and as a result of the fiscal year 2005 appropriations act provision that establishes a permanent requirement for use of best value procedures when purchasing FPI products. Differences between the March 26, 2004, interim rule and this second interim rule are addressed in the discussion of Comments 1, 2, 5, 9, 13, and 18 below.

In addition, a change has been made at FAR 8.605 to clarify that purchase from FPI is not mandatory when an agency is acquiring items that the FPI Board of Directors has determined that FPI offers exclusively on a competitive basis. It should be noted that the requirements of FAR 8.602(b) apply only to items of supply offered by FPI subject to its mandatory source status. FAR 8.602(b) does not apply to purchase of a service or to purchase of any item of supply that FPI has been authorized by its Board of Directors to offer exclusively on a competitive (non-mandatory) basis. With regard to a purchase of such an item or any service offered by FPI, FPI must be an otherwise eligible offeror pursuant to the applicable solicitation. For example, FPI would not be eligible to participate in a solicitation to acquire a service, if the competition has been restricted to small

business concerns in accordance with FAR Subpart 19.5.

Discussion of Comments:

1. *Comment:* For a solicitation that is normally posted on FedBizOpps, is the contracting officer required to send a copy of the solicitation to FPI or is FPI responsible for checking FedBizOpps and responding just like any other vendor?

Councils' response: If a solicitation is posted on FedBizOpps, the contracting officer need not send a separate copy to FPI. Paragraph (b)(4)(ii) of section 8.602 of the rule has been revised to clarify this procedure.

2. *Comment:* Is FPI subject to the terms and conditions of the clauses in any given solicitation, and is FPI required to complete the representations and certifications included with the solicitation?

Councils' response: Offers from FPI must be evaluated in accordance with the item description or specifications and evaluation factors in the solicitation. However, purchases from FPI must be made using the ordering procedures at <http://www.unicor.gov>. Therefore, FPI need not complete the representations and certifications included with the solicitation. If an agency determines that purchase from FPI will provide the best value to the Government after issuance of a competitive solicitation, the agency must make the purchase in accordance with FPI's ordering procedures. Sections 8.602(b)(4)(ii) and 8.602(b)(4)(iii)(A) have been revised, and new paragraphs at 8.602(b)(4)(iv) and 8.602(b)(4)(v) have been added to clarify this procedure.

3. *Comment:* The rule presently excludes purchases at or below \$2,500 from market research requirements, if the purchase is made from a source other than FPI. Purchases from FPI at or below \$2,500 should also be excluded from market research requirements.

Councils' response: FAR 8.605 exempts purchases at or below \$2,500 from FPI mandatory source requirements. However, if an agency chooses to make a purchase at or below \$2,500 from FPI, the agency must first conduct market research, to comply with Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 prohibits the expenditure of any funds for purchase of a product or service from FPI, unless the agency making the purchase determines that the FPI product or service provides the best value to the Government in accordance with 10 U.S.C. 2410n, which contains market research requirements.

4. *Comment:* Contracting officers are hesitating to use these new procedures

because they are not officially published in the FAR.

Councils' response: The interim rule containing these new procedures became effective upon publication on March 26, 2004. The procedures have been mandatory for use by contracting officers since that date.

5. *Comment:* This new regulation can only be effective if it is made permanent.

Councils' response: In accordance with Section 637 of Division H of the Consolidated Appropriations Act, 2005, the requirements of the rule have been made permanent. Therefore, the rule has been amended at FAR 8.602(a), 8.602(b), and 8.605(a), and former paragraph (e) of FAR 8.602 has been removed to reflect this change.

6. *Comment:* Why include FPI in the solicitation process after the contracting officer has determined the FPI item to be noncomparable?

Councils' response: Section 637 requires that purchase of FPI products be made in accordance with the procedures, standards, and limitations of 10 U.S.C. 2410n. 10 U.S.C. 2410n requires that (1) if an FPI product is not comparable to products available from the private sector, the product must be purchased through competitive procedures or a multiple award contract; and (2) in conducting such a competition or making such a purchase, the purchasing agency must consider a timely offer from FPI.

7. *Comment:* To ensure proper implementation of this rule, the FAR Council and agency contracting officials should monitor information disseminated to contracting officers by aggressive FPI marketing agents.

Councils' response: The comment is outside the scope of this FAR rule.

8. *Comment:* Inclusion of FPI in FAR clauses for small business set-asides negatively impacts our nation's small entrepreneurs by subjecting them to unfair competition. Set-asides are designed to afford small businesses the maximum practicable opportunity to participate in the performance of federal government contracts.

Councils' response: 10 U.S.C. 2410n(b) requires agencies to include FPI in the competition if an FPI product is found to be non-comparable to products available from the private sector. 10 U.S.C. 2410(g) defines "competitive procedures" to include small business set-asides. Therefore, FPI may participate in small business set-asides in only those situations where an FPI product has been found to be non-comparable to private sector products, and the subsequent competition is limited to FPI and small business

concerns. For those items of supply where FPI is found to be comparable, FPI's mandatory source status would apply.

9. *Comment:* The final rule should emphasize the two-step nature of the procedures at FAR 8.602(b) or at least add the definition of "comparable" to FAR Subpart 8.6.

Councils' response: This second interim rule contains a new paragraph 8.602(b)(4)(iv) to emphasize that, if an FPI product is determined to be non-comparable to products available from the private sector, a best value determination must be made after conducting a competition that includes FPI. A definition of "comparable" in FAR Subpart 8.6 is considered unnecessary, as "comparable" is used throughout the FAR with its common dictionary meaning.

10. *Comment:* There needs to be clarification on how to structure a contract for administrative convenience. Regardless of whether a product is provided to the Government directly or indirectly, a comparability determination and competitive procedures are required any time products offered for sale by FPI are purchased for a Government agency. For instance, agencies are not permitted by law to procure office furniture as part of a consolidated or prime contract for the construction or renovation of a building, if such a contracting method is used to preclude the necessity for a comparability determination or competitive procedures pursuant to Section 637. If FPI is found to be comparable, or is the competitive choice, the agency is required to purchase from FPI, regardless of the procurement method. In such cases, the purchase would need to be made directly by the agency, following the requirements of Section 637.

Councils' response: Special procedures regarding structuring of contracts are considered unnecessary with regard to this rule. Consolidation of requirements merely to avoid a comparability determination or competitive procedures pursuant to Section 637 would be improper, as would any other action taken to circumvent statutory or regulatory requirements. However, consolidation, where appropriate, appears to be consistent with 10 U.S.C. 2410n(e), which addresses the issue of subcontracting and specifically prohibits the Government from requiring a contractor to use FPI as a subcontractor or supplier. In such cases, therefore, it is the responsibility of the agency to ensure compliance with the requirements of this interim rule if the

procurement involves items of supply on FPI's Schedule.

11. *Comment:* The impact of this rule on small business concerns that supply goods and services to FPI will be negative.

Councils' response: This issue is addressed in the Initial Regulatory Flexibility Analysis for this second interim rule.

12. *Comment:* Section 637 is temporary legislation. However, the following sections of the rule are drafted in such a way as to imply permanence: Section 8.607, which prohibits agencies from requiring use of FPI as a subcontractor; Section 8.605(f), which provides an exception to FPI's mandatory source status for services; and Section 19.502-1, which removes FPI from the examples of required sources of supply. This is erroneous and must be corrected. In fact, the propriety of Section 8.607 of the rule is questioned in its entirety. Section 637 is directed toward determining that the FPI product provides the best value to the buying agency. Prohibitions on the use of FPI as a subcontractor are not germane to this determination. Hence, there is no legislative authorization for imposing section 8.607 on civilian agencies.

Councils' response: (1) In accordance with Section 637 of Division H of the Consolidated Appropriations Act, 2005, this legislative requirement is now permanent.

(2) Section 8.607 has been appropriately included in this FAR rule. It implements 10 U.S.C. 2410n, which was made applicable to civilian agencies by the Consolidated Appropriations Acts for fiscal years 2004 and 2005.

(3) FPI is not a mandatory source for services, as indicated in the order of priorities at FAR 8.002(a)(2).

(4) Removal of FPI from the list of examples at FAR 19.502-1 prevents potential conflict within the regulation, but has no impact on FPI's mandatory source status.

13. *Comment:* The interim rule has deleted the following sections: Section 8.602(b), which encourages maximum practicable purchase of FPI-manufactured supplies that are not listed in the Schedule and FPI services that are listed in the Schedule; Section 8.602(c), which encourages agencies to suggest the addition of items to the Schedule; Section 8.603(b), which addresses the conformity of FPI supplies and services to Federal specifications, and the content and availability of FPI's Schedule; and Section 8.605(b), which specifies that purchases from other sources because of a lower price are not

normally authorized. These sections should be fully applicable upon expiration of Section 637 and, therefore, should be restored.

Councils' response: (1) In accordance with Section 637 of Division H of the Consolidated Appropriations Act, 2005, this legislative requirement is now permanent.

(2) This second interim rule includes a statement at 8.601(e) that encourages agencies to purchase FPI supplies and services to the maximum extent practicable. The text previously in Sections 8.602(c) and 8.603(b) is considered unnecessary for inclusion in the FAR, except for the text on availability of FPI's schedule, which has been relocated to Section 8.601(d).

(3) The text previously in Section 8.605(b) is no longer applicable as a result of the resolution of the FPI Board of Directors, in accordance with the information at <http://www.unicor.gov>, that FPI will grant waivers in all cases where the private sector provides a lower price for a comparable product that FPI does not meet.

14. *Comment:* Clarify the applicability of price evaluation preferences for HUBZone small business concerns and small disadvantaged business concerns when evaluating an offer from FPI that had been found noncomparable initially.

Councils' response: The clauses at FAR 52.219-4 and 52.219-23 provide notice and procedures for use of a price evaluation factor for HUBZone small business concerns and small disadvantaged business concerns, respectively. These are not set-aside procedures that exclude other potential offerors. FPI would be treated the same as any other eligible offeror not entitled to the benefit of the price evaluation factor. Therefore, no clarification in this area is needed.

15. *Comment:* To reflect the requirements of 18 U.S.C. 4122, Section 8.601(c) of the rule should be changed as follows:

From: "FPI diversifies its supplies and services to minimize adverse impact on private industry."

To: "FPI's statute requires FPI to diversify its supplies and services to minimize adverse impact on private industry."

Councils' response: The recommended change is considered unnecessary. FPI's statute (18 U.S.C. 4121-4128) is referenced in section 8.601(b) of the rule.

16. *Comment:* Since Section 637 appears to be intended to open the procurement process, there should be no set-asides for JWOD products if FPI is unable to meet the threshold for price,

quality, and delivery. The JWOD agency should have the right to participate in the open bidding process under this rule as with industry and FPI.

Councils' response: The procedures in section 8.602(d) of the rule, regarding purchase from JWOD participating nonprofit agencies employing people who are blind or severely disabled, apply only in limited situations where FPI grants an advance waiver that permits JWOD agencies to provide a portion of the Government's requirements for certain items. In these situations, FPI does not "offer" the portion reserved for JWOD agencies. This existing practice has been addressed in the rule to avoid any negative impact to JWOD participating nonprofit agencies.

17. *Comment:* It is unclear under sections 8.602 and 8.605 whether a sole source award to other than FPI, without notifying and considering a timely offer from FPI, is permitted when acquiring supplies totaling over \$2,500 within the United States after the FPI item has been determined to be non-comparable.

Councils' response: Even if FPI's product has been determined, as a result of market research, to be non-comparable to an item available from the private sector, FPI would still be regarded as a responsible source for purposes of conducting competition and, in accordance with FAR 8.602(b)(4), must be given an opportunity to compete.

18. *Comment:* Sections 8.602(b) and 8.602(c) seem to conflict with FAR 8.605. FAR 8.602(c) states that 8.602(b) does not apply if an exception in 8.605 applies, but 8.605(a) requires compliance with 8.602(b) procedures.

Councils' response: For clarification, FAR 8.602(c) has been revised to exclude the reference to FAR 8.605(a).

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, 5 U.S.C. 601, *et seq.*, applies to this interim rule. The Councils have prepared an Initial Regulatory Flexibility Analysis (IRFA), which is summarized as follows:

This interim rule amends the FAR to implement the Consolidated Appropriations Act, 2005, Division H, Section 637 (Public Law 108-447). The Act imposes the procedures, standards, and limitations of 10 U.S.C. 2410n, which requires market research before purchasing a product listed in the FPI

catalog, to determine whether the FPI product is comparable to products available from the private sector that best meet the agency's needs in terms of price, quality, and time of delivery. If the FPI product is not comparable, the agency must use competitive procedures to acquire the product or must make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the agency must consider a timely offer from FPI.

The rule could benefit small business concerns that offer products comparable to those listed in the FPI catalog, by permitting those concerns to compete for Federal contract awards. However, the rule could have a negative impact on those small business concerns that supply goods or services to FPI. In response to an interim FAR rule published on March 24, 2004, that contained a similar requirement, FPI stated that it purchased over \$497,000,000 of goods or services from private sector companies during fiscal year 2003, and over 53 percent of those purchases were from small business concerns.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 8 and 25 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 2005-03, FAR case 2003-023), 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 Section 637 of Division H of Public Law 108-447, the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries,

Inc., unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency pursuant to Governmentwide procurement regulations issued pursuant to 41 U.S.C. 421(c)(1) that impose procedures, standards, and limitations of 10 U.S.C. 2410n. Section 637 became effective December 8, 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 Parts 8 and 25

Government procurement.

Dated: April 1, 2005.

Rodney P. Lantier,

Director, Contract Policy Division, General Services Administration.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 25 as set forth below:

■ 1. The authority citation for 48 CFR parts 8 and 25 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).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.601 by adding paragraph (e) to read as follows:

8.601 General.

* * * * *

(e) Agencies are encouraged to purchase FPI supplies and services to the maximum extent practicable.

■ 3. Amend section 8.602 by—

■ a. Revising paragraph (a);

■ b. Revising the introductory text of paragraph (b), paragraphs (b)(4)(ii) and (b)(4)(iii); and adding paragraphs (b)(4)(iv) and (b)(4)(v);

■ c. Removing from paragraph (c) “8.605” and adding “8.605(b) through (g)” in its place; and

■ d. Removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

The revised text reads as follows:

8.602 Policy.

(a) Agencies shall use the procedures in this subpart when purchasing supplies of the classes listed in the FPI Schedule.

(b) In accordance with 10 U.S.C. 2410n and Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447), agencies shall—

* * * * *

(4) * * *

(ii) Include FPI in the solicitation process and consider a timely offer from

FPI for award in accordance with the item description or specifications, and evaluation factors in the solicitation—

(A) If the solicitation is available through the Governmentwide point of entry (FedBizOpps), it is not necessary to provide a separate copy of the solicitation to FPI;

(B) If the solicitation is not available through FedBizOpps, provide a copy of the solicitation to FPI;

(iii) When using a multiple award schedule issued under the procedures in Subpart 8.4 or when using the fair opportunity procedures in 16.505—

(A) Establish and communicate to FPI the item description or specifications, and evaluation factors that will be used as the basis for selecting a source, so that an offer from FPI can be evaluated on the same basis as the contract or schedule holder; and

(B) Consider a timely offer from FPI;

(iv) Award to the source offering the item determined by the agency to provide the best value to the Government; and

(v) When the FPI item is determined to provide the best value to the Government as a result of FPI’s response to a competitive solicitation, follow the ordering procedures at <http://www.unicor.gov>.

* * * * *

■ 4. Amend section 8.605 by—

■ a. Removing the introductory text of paragraph (a);

■ b. Removing from the end of paragraph (e) the word “or”; and

■ c. Redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) to read as follows:

8.605 Exceptions.

* * * * *

(f) Acquiring items that FPI offers exclusively on a competitive (non-mandatory) basis, as identified in the FPI Schedule; or

* * * * *

PART 25—FOREIGN ACQUISITION

■ 5. Amend section 25.401 by revising paragraph (a)(4) to read as follows:

25.401 Exceptions.

(a) * * *

(4) Acquisitions from Federal Prison Industries, Inc., under Subpart 8.6, and acquisitions under Subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled; and

* * * * *

[FR Doc. 05-6865 Filed 4-8-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2005-03; FAR Case 2004-020; Item II]

RIN 9000-AK05

Federal Acquisition Regulation; Section 508 Micropurchase Exemption

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 convert the interim rule published in the **Federal Register** at 69 FR 59702, October 5, 2004, to a final rule without change. The final rule amends the Federal Acquisition Regulation (FAR) to extend the Electronic and Information Technology (Section 508) micropurchase exception from October 1, 2004 to April 1, 2005.

DATES: Effective Date: April 11, 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 or Ms. Angelena Moy, Case Manager, at (703) 602-1302. Please cite FAC 2005-03, FAR case 2004-020.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation. DoD, GSA, and NASA published an interim rule in the **Federal Register** at 69 FR 59702, October 5, 2004. One respondent submitted public comments. The comments submitted were deemed outside the scope of the rule. The Councils concluded that the interim rule should be converted to a final rule without change.

The extension of the micropurchase exception until April 1, 2005, will provide agencies time to update their agency’s purchase card training modules on the 508 requirements and implement necessary training of personnel. Free online training developed by GSA, in collaboration with the Section 508 Executive Steering

Committee, is also available at <http://www.section508.gov>.

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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration 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 the rule keeps the status quo by continuing the micropurchase exemption to Section 508 until April 1, 2005. The extension of the micropurchase exception will not cause a significant impact on the disability community or industry.

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 39

Government procurement.

Dated: April 1, 2005.

Rodney P. Lantier,

Director, Contract Policy Division, General Services Administration.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 39, which was published at 69 FR 59702, October 5, 2004, is adopted as a final rule without change.

[FR Doc. 05-6866 Filed 4-8-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005-03; Item III]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial corrections.

DATES: *Effective Date:* April 11, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-03, Technical Amendments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: April 1, 2005.

Rodney P. Lantier,

Director, Contract Policy Division, General Services Administration.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 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).

52.212-5 [Amended]

■ 2. Amend section 52.212-5 by revising the date of the clause to read “(APR 2005)”; and by removing from paragraph (b)(26) “(DEC 2003)” and adding “(MAR 2005)” in its place.

52.213-4 [Amended]

■ 3. Amend section 52.213-4 by revising the date of the clause to read “(APR 2005)”; and by removing from paragraph (a)(1)(iv) “(DEC 2003)” and adding “(MAR 2005)” in its place.

52.219-18 [Amended]

■ 4. Amend section 52.219-18, in Alternate I, by removing “(Nov 1989)” and adding “(Apr 2005)” in its place; removing “subparagraph (a)(4)” and adding “paragraph (a)(3)” in its place; and removing the paragraph designation “(4)” and adding “(3)” in its place.

52.225-13 [Amended]

■ 5. Amend section 52.225-13 by removing from the clause heading “(DEC 2003)” and adding “(MAR 2005)” in its place.

[FR Doc. 05-6867 Filed 4-8-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005-03 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-03 which precedes this document. These documents are also available via the Internet at <http://www.acqnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501-4755. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005-03

Item	Subject	FAR case	Analyst
I*	Purchases From Federal Prison Industries—Requirement for Market Research (Interim)	2003-023	Nelson.
II	Section 508 Micropurchase Exemption	2004-020	Nelson.
III	Technical Amendments.		

Item I—Purchases From Federal Prison Industries—Requirement for Market Research (FAR Case 2003-023) (Interim)

This interim rule updates and clarifies procedures for purchase of items from Federal Prison Industries (FPI). The changes include—

- Establishment of a permanent requirement for market research and a comparability determination before purchasing an item of supply listed in the FPI Schedule. For civilian agencies, this requirement previously applied only to purchases made using fiscal year 2004 appropriated funds. Section 637 of Division H of the Consolidated Appropriations Act, 2005, made this requirement permanent for all Federal agencies.

- Clarification that, if a solicitation is available through the Governmentwide point of entry (FedBizOpps), it is not necessary to provide a separate copy of the solicitation to FPI.

- Clarification that, if an agency determines that an FPI item provides the best value to the Government as a result of FPI's response to a competitive solicitation, the agency must purchase the item from FPI using the ordering procedures at FPI's website.

Item II—Section 508 Micropurchase Exemption (FAR Case 2004-020)

The interim rule published on October 5, 2004, is converted to a final rule without change. This rule extends the Electronic and Information Technology (Section 508) micropurchase exception to April 1, 2005. This rule is of special interest to

contracting officers and other individuals designated in accordance with FAR 1.603-3. All micropurchases made on and after April 1, 2005, must comply with the requirements of Section 508. Micropurchases are subject to the same exemption provision as larger dollar buys, as articulated in FAR 39.204.

Item III—Technical Amendments

Editorial changes are made at FAR 52.212-5, 52.213-4, 52.219-18, and 52.225-13, in order to update references.

Dated: April 1, 2005.

Rodney P. Lantier,
Director, Contract Policy Division, General Services Administration.

[FR Doc. 05-6868 Filed 4-8-05; 8:45 am]

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