



Federal Register

**Tuesday,
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Part III

Department of Defense General Services Administration

National Aeronautics and Space Administration

**48 CFR Chapter 1; and Parts 1, 2, 4, 12,
52 et al.**

**Federal Acquisition Regulations; Final
Rule and Small Entity Compliance Guide**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2008–0003, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–25; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final 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) 2005–25. 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. Please cite FAC 2005–25 and the 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 2005–25

| Item | Subject | FAR case | Analyst |
|-----------|--|----------|----------|
| I | Federal Procurement Data System Reporting (Interim) | 2004–038 | Woodson. |
| II | Electronic Subcontracting Reporting System (eSRS) (Interim) | 2005–040 | Cundiff. |
| III | Revisions to the Defense Priorities and Allocations System (DPAS) | 2006–033 | Davis. |
| IV | Use of Products Containing Recovered Materials in Service and Construction Contracts | 2005–039 | Clark. |
| V | Representations and Certifications - Tax Delinquencies | 2006–011 | Murphy. |
| VI | Enhanced Access for Small Business | 2006–031 | Murphy. |
| VII | Technical Amendment. | | |

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 2005–25 amends the FAR as specified below:

Item I—Federal Procurement Data System Reporting (FAR Case 2004–038) (Interim)

This interim 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). FPDS will allow agencies to obtain Federal procurement reports as well as several workload reports designed specifically for first-line supervisors. The use of the Federal reports will alleviate the need for individual agencies to collect, verify, and distribute statistics for a host of requirements such as the Small Business Goaling Report (SBGR), the Performance-Based Acquisition (PBA) report, the Central Contractor Registration (CCR), and the Resource Conservation and Recovery Act (RCRA) report. The rule provides questions and answers to facilitate the public’s understanding of the changes proposed in the interim for reporting contract actions under FAR Subpart 4.6.

Item II—Electronic Subcontracting Reporting System (eSRS) (FAR Case 2005–040) (Interim)

This interim rule amends the Federal Acquisition Regulation to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report. The eSRS is a web-based system managed by the Integrated Acquisition Environment. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

Item III—Revisions to the Defense Priorities and Allocations System (DPAS) (FAR Case 2006–033)

This final rule amends the language in the Federal Acquisition Regulation (FAR) to reflect the President’s delegation of the Defense Production Act’s priorities and allocations authorities in Executive Order 12919, and the current provisions of the Defense Priorities and Allocations System (DPAS) regulations of the Department of Commerce in 15 CFR Part 700.

FAR changes incorporated in parts 2, 11, 18, 52, and 53 benefit both the Government and industry in the

receiving of timely and proper delivery of industrial resources. Contracting officers should take notice of the changes in the FAR especially the changes to the Standard Form (SF) 26, Award/Contract and SF 1447, Solicitation/Contract, and use the revised SF 26 and SF 1447 that reflects the 15 CFR 700 citation and 2008 edition date change.

Item IV—Use of Products Containing Recovered Materials in Service and Construction Contracts (FAR Case 2005–039)

This final rule amends the Federal Acquisition Regulation (FAR) to clarify language within the FAR regarding the use of products containing recovered materials, pursuant to the Resource Conservation and Recovery Act of 1976, and Executive Order 13101 “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.” The rule also prescribes a new clause for use in service or construction contracts, to ensure that contractors deliver and make maximum use of products containing recovered material.

Item V—Representations and Certifications - Tax Delinquencies (FAR Case 2006–011)

This final rule amends the Federal Acquisition Regulation (FAR) to add conditions regarding refusal to pay delinquent Federal taxes to standards of

contractor responsibility, causes for suspension and debarment, and the certifications regarding debarment, suspension, and proposed debarment. The changes are intended to add clarity regarding the specific circumstances under which tax delinquencies are so serious that suspension or debarment should be considered. The changes originated in response to a request from the Senate Permanent Subcommittee on Investigations.

Item VI—Enhanced Access for Small Business (FAR Case 2006–031)

This final rule creates a different, higher dollar ceiling enabling small businesses to use the small claims procedure for appealing a contracting officer's final decision. Section 857 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) changed the ceiling under the Contract Disputes Act from \$50,000 or less to \$150,000 or less for small businesses. The ceiling remains at \$50,000 or less for other types of businesses. The change to 41 U.S.C. 608 is a ceiling change only.

Item VII—Technical Amendment

An editorial change is made at FAR 1.603–1.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–25 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 2005–25 is effective April 22, 2008, except for Items IV, V, and VI which are effective May 22, 2008.

Dated: April 10, 2008.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy, and Strategic Sourcing.

Dated: April 7, 2008.

David A. Drabkin,

Acting Chief Acquisition Officer & Senior Procurement Executive, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: April 3, 2008.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E8–8402 Filed 4–21–08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 12, and 52

[FAC 2005–25; FAR Case 2004–038; Item I; Docket 2008–0001, Sequence 6]

RIN 9000–AK94

Federal Acquisition Regulation; FAR Case 2004–038, Federal Procurement Data System Reporting

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 process for reporting contract actions to the Federal Procurement Data System (FPDS).

DATES: *Effective Date:* April 22, 2008.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 23, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–25, FAR case 2004–038, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2004–038” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2004–038. Follow the instructions provided to complete the “Public Comment and Submission Form”.

Please include your name, company name (if any), and “FAR Case 2004–038” on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–25, FAR case 2004–038, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any

personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–25, FAR case 2004–038. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

As of October 2003, all agencies were to begin reporting FAR-based contract actions to the modified system. During Fiscal Year 2004, members of the interagency Change Control Board, as well as departmental teams working on the migration of data from the old to new system, recognized both the opportunity to standardize reporting processes and the need to revise the FAR to provide current and clear reporting requirements.

In this interim rule, the Government is establishing its commitment for Federal Procurement Data System (FPDS) data to serve 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 (SBGR), and Resource Conservation and Recovery Act (RCRA) data.

The enhanced FPDS was put into production on October 1, 2003 by implementing newer technology to report contract actions. The old system had 48 data elements; the new system has 145+ elements, including who funds the contract. The new system has the ability to receive data and provide data to other applications used in the procurement community, allowing the Government to give “credit” to the agency that funds the contract action. The system is also an enabler ensuring that metrics are consistent when comparing one department, service, or organization to another.

Small agencies that do not have the staff or resources necessary to purchase the automated contract writing application necessary for reporting contract actions as required by this interim rule are encouraged to partner with a large agency and become a subscriber on their system. For information about frequently asked questions, see <https://www.fpds.gov>.

The rule amends the FAR by:

1. Revising FAR 1.106 to change the FAR segment 4.602 to 4.605, and 4.603 to 4.607.