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48 CFR Parts 1, 3, 4, et al.

Federal Acquisition Regulations; Federal Acquisition Circular 2005–32; FAR Case 2008–026; FAR Cases 2009–008, –009, –010, –011, and –012, American Recovery and Reinvestment Act of 2009 (the Recovery Act); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2009–0001, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–32; 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) 2005–32. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available

via the Internet at <http://acquisition.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: 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 2005–32 and specific FAR case number(s). Interested parties may also visit our Web site at <http://acquisition.gov/far>. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–32

Item	Subject	FAR case	Analyst
I	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim).	2009–008	Murphy.
II	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim).	2009–012	Parnell.
III	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (Interim).	2009–010	Gary.
IV	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements (Interim).	2009–009	Woodson.
V	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—GAO/IG Access (Interim) ..	2009–011	Chambers.
VI	GAO Access to Contractor Employees (Interim)	2008–026	Neurauter.

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 2005–32 amends the FAR as specified below:

Item I—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim) (FAR Case 2009–008)

This interim rule implements the Buy American provision, section 1605, of the American Recovery and Reinvestment Act of 2009. It prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. However, section 1605 requires that the Buy American requirement be applied in a manner consistent with U.S. obligations under international agreements. Moreover, because Congress intended that least developed countries be excepted from section 1605, least developed countries can continue to be treated as designated countries. Section 1605 also provides

for waivers under certain limited circumstances.

Item II—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim) (FAR Case 2009–012)

Subpart 3.9 of the Federal Acquisition Regulation (FAR) is revised to add section 3.907. Section 3.907 provides procedures for whistleblower protection, when using funds appropriated or otherwise provided by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

Section 3.907 provides that non-Federal employers are prohibited from discharging, demoting, or discriminating against employees as a reprisal for disclosing certain covered information to certain categories of Government officials. This section further provides definitions relevant to the statute; establishes time periods within which the Inspector General and the agency head must take action with regard to a complaint filed by a contractor employee; establishes procedures for access to investigative files of the Inspector General; and provides for remedies and enforcement authority.

A new clause 52.203–15 is added to require contractors to post rights and remedies for whistleblower protections

under Section 1553 of the American Recovery and Reinvestment Act.

Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (Interim) (FAR Case 2009–010)

This interim rule implements the Office of Management and Budget’s Guidance, M–09–10, “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” dated February 18, 2009, section 6.2. Federal Acquisition Regulation (FAR) Part 4 requires the contracting officer to enter data in the Federal Procurement Data System on any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), in accordance with the instructions at <https://www.fpds.gov>. Subpart 5.7 is added to direct the contracting officer to use the Governmentwide Point of Entry (<https://www.fedbizopps.gov>) to (1) Identify the action as funded by the Recovery Act; (2) post pre-award notices for orders exceeding \$25,000 for “informational purposes only;” (3) describe supplies and services (including construction) in a narrative that is clear and unambiguous to the general public; and (4) provide a rationale for awarding any action, including modifications and orders, that is not both fixed-price and competitive,

and include the rationale for using other than a fixed-price and/or competitive approach. Parts 8, 13, and 16 are amended to reflect the new posting requirements for orders at Subpart 5.7.

Item IV—American Recovery and Reinvestment Act of 2009 (The Recovery Act)—Reporting Requirements (Interim) (FAR Case 2009–009)

This interim rule implements section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds. The rule adds a new subpart 4.15, and a new clause, 52.204–11. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This clause applies to Commercial item contracts and Commercially-Available-Off-The-Shelf (COTS) item contracts as well as actions under the Simplified Acquisition Threshold.

Contracting officers who wish to use Recovery Act funds on existing contracts should modify those contracts to add the clause.

Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

Item V—American Recovery and Reinvestment Act of 2009 (The Recovery Act)—GAO/IG Access (Interim) (FAR Case 2009–011)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 902, 1514, and 1515 of the American Recovery and Reinvestment Act of 2009. Collectively, these Sections provide for the audit and review of both contracts and subcontracts, and the ability to interview such contractor and subcontractor personnel under contracts containing Recovery Act funds.

These Recovery Act provisions are implemented in new alternate clauses to 52.212–5, “Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items”, 52–214–26, “Audit and Records—Sealed Bidding,” and 52.215–2, “Audit and Records—Negotiation”. For the Comptroller General these alternate clauses provide

specific authority to audit contracts and subcontracts and to interview contractor and subcontractor employees under contracts using Recovery Act funds. Agency inspector generals receive the same authorities, with the exception of interviewing subcontractor employees.

Item VI—GAO Access to Contractor Employees (Interim) (FAR Case 2008–026)

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 12 and 52. Clauses 52.215–2, Audit and Records—Negotiation and 52.214–26, Audit and Records—Sealed Bidding are being modified to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule will not apply to the acquisition of commercial items; therefore, FAR 12.503 will be amended to add the exemption of this rule. This change implements Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417).

Dated: March 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–32 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 2005–32 is effective March 31, 2009.

Dated: March 24, 2009.

Shay D. Assad,

Director, Defense Procurement And Acquisition Policy.

Dated: March 24, 2009.

Rodney P. Lantier,

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

Dated: March 24, 2009.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–7027 Filed 3–30–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 25, and 52

[FAC 2005–32; FAR Case 2009–008; Item I; Docket 2009–0008, Sequence 1]

RIN 9000–AL22

Federal Acquisition Regulation; FAR Case 2009–008, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material

AGENCY: 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 the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) with respect to the Buy American provision, section 1605 in Division A. This rule does not cover procurements funded with Federal financial assistance such as Federal grants. Additional guidance will be provided by the Office of Management and Budget with respect to the application of section 1605 to procurements funded with Federal financial assistance.

DATES: *Effective Date:* March 31, 2009.

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after the effective date of this rule. Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts to include the FAR clauses for future orders, if Recovery Act funds will be used. In the event that a contractor refuses to accept such a modification, the contractor will not be eligible for receipt of Recovery Act funds.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 1, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–32, FAR case 2009–008, by any of the following methods: