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Part III

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Parts 2, 3, 12 et al.
**Federal Acquisition Regulation; Final
Rules and Small Entity Compliance Guide**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009-0012, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-30; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of 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) 2005-30. 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 2005-30 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

LIST OF RULES IN FAC 2005-30

Item	Subject	FAR case	Analyst
I	Federal Procurement Data System (FPDS)	2004-038	Woodson.
II	Commercially Available Off-the-Shelf (COTS) Items	2000-305	Jackson.
III	Exemption of Certain Service Contracts from the Service Contract Act (SCA)	2001-004	Woodson.
IV	Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts-Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (Interim)	2008-003	Woodson.
V	SAFETY Act: Implementation of DHS Regulations	2006-023	Chambers.
VI	Electronic Products Environmental Assessment Tool (EPEAT)	2006-030	Clark.
VII	Combating Trafficking in Persons	2005-012	Woodson.
VIII	Trade Agreements—New Thresholds	2007-016	Murphy.
IX	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 2005-30 amends the FAR as specified below:

Item I—Federal Procurement Data System (FPDS) (FAR Case 2004-038)

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.

Item II—Commercially Available Off-the-Shelf (COTS) Items (FAR Case 2000-305)

This final rule amends the Federal Acquisition Regulation (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 material 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.”

Item III—Exemption of Certain Service Contracts from the Service Contract Act (SCA). (FAR Case 2001-004)

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.

Item IV—Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts-Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (Interim) (FAR Case 2008-003)

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). 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 requires that contracting officers shall 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.

Item V—SAFETY Act: Implementation of DHS Regulations (FAR Case 2006–023)

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. Examples of Qualified Anti-Terrorism Technologies (QATT) identified by DHS include—

- Vulnerability assessment and countermeasure and counter-terrorism planning tools;
- First responder interoperability solution;
- Marine traffic management system;
- Security services, guidelines, systems, and standards;
- Vehicle and cargo inspection system;
- X-ray inspection system;
- Trace explosives detection systems and associated support services;
- Maintenance and repair of screening equipment;
- Risk assessment platform;
- Explosive and weapon detection equipment and services;
- Biological detection and filtration systems;
- Passenger screening services;
- Baggage screening services;
- Chemical, biological, or radiological agent release detectors;
- Vehicle barriers;
- First responder equipment; and
- Architectural and engineering “hardening” products and services.

Item VI—Electronic Products Environmental Assessment Tool (EPEAT) (FAR Case 2006–030)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, the interim rule that amended the Federal Acquisition Regulation (FAR) to require 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.

Item VII—Combating Trafficking in Persons (FAR Case 2005–012)

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.

Item VIII—Trade Agreements—New Thresholds (FAR Case 2007–016)

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.

Item IX—Technical Amendment

An editorial change is made at FAR 15.101–2.

Dated: December 24, 2008.

Edward Loeb,

Acting Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-30 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 2005-30 is effective February 17, 2009, except for Items VIII and IX, which are effective **January 15, 2009**.

Dated: December 22, 2008.

Shay D. Assad,

Director, Defense Procurement.

Dated: December 24, 2008.

David A. Drabkin,

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

Dated: December 22, 2008.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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