

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2012-0080, Sequence 4]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-59; Introduction**

**AGENCY:** 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 (Councils) in this Federal Acquisition Circular (FAC) 2005-59. 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 2005-59 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

**LIST OF RULES IN FAC 2005-59**

Item	Subject	FAR Case	Analyst
I .....	Prohibition on Contracting With Inverted Domestic Corporations .....	2012-013	Jackson.
II .....	Free Trade Agreement—Colombia .....	2012-012	Davis.
III .....	Revision of Cost Accounting Standards Threshold .....	2012-003	Chambers.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005-59 amends the FAR as specified below:

**Item I—Prohibition on Contracting With Inverted Domestic Corporations (FAR Case 2012-013) (Interim)**

This interim rule implements section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), which prohibits the award of contracts using Fiscal Year 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity. This interim rule extends an existing prohibition that applied to use of Fiscal Years 2008 through 2010 funds. Contracting officers are prohibited from awarding contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity, unless an exception applies. The exceptions are at FAR 9.108-2. This rule is not expected to have an effect on small business because this rule will only impact an offeror that is an inverted domestic corporation and wants to do business with the Government. Small business concerns are unlikely to have been incorporated in the United States and then reincorporated in a tax haven.

**Item II—Free Trade Agreement—Colombia (FAR Case 2012-012)**

This interim rule implements a new Free Trade Agreement with Colombia (see the United States—Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note)).

This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Colombia. This interim rule is not expected to have a significant economic impact on a substantial number of small entities.

**Item III—Revision of Cost Accounting Standards Threshold (FAR Case 2012-003)**

This final rule revises the cost accounting standards (CAS) threshold in order to implement in the FAR a recent rule of the Cost Accounting Standards Board and statutory requirements. The threshold now equals the Truth in Negotiations Act (TINA) threshold, currently \$700,000. There is no impact on small businesses as they are exempt from CAS pursuant to 48 CFR 9903.201-1(b).

Dated: May 3, 2012.

Laura Auletta,

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Federal Acquisition Circular (FAC) 2005-59 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 2005-59 is effective May 10, 2012, except for Item II which is effective May 15, 2012.

Dated: May 3, 2012.

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: May 2, 2012.

**Joseph A. Neurauter,**

*Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: May 3, 2012.

**William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2012-11147 Filed 5-9-12; 8:45 am]

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 9 and 52**

[FAC 2005–59; FAR Case 2012–013;  
Item I; Docket 2012–0013, Sequence 1]

RIN 9000–AM22

**Federal Acquisition Regulation;  
Prohibition on Contracting With  
Inverted Domestic Corporations**

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

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2012, that prohibits the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity.

**DATES:** *Effective Date:* May 10, 2012.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before July 9, 2012 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–59, FAR Case 2012–013 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching “FAR Case 2012–013”. Select the link “Submit a Comment” that corresponds with “FAR Case 2012–013”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2012–013” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005–59, FAR Case 2012–013, 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. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–59, FAR Case 2012–013.

**SUPPLEMENTARY INFORMATION:****I. Background**

This rule implements section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), which was signed on December 23, 2011. The same Governmentwide restrictions are already incorporated in the FAR for funds appropriated in Fiscal Years 2008 through 2010, under FAR Case 2008–009, which published as an interim rule in the **Federal Register** at 74 FR 31561 on July 1, 2009, and as a final rule which published in the **Federal Register** at 76 FR 31410 on May 31, 2011.

Section 738 of Division C extends to the use of Federal appropriated funds for Fiscal Year 2012, the prohibition against contracting with any inverted domestic corporation, as defined at section 835(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 6 U.S.C. 395(b)) or any subsidiary of such an entity.

An inverted domestic corporation is one that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country. See the definition of inverted domestic corporation at FAR 9.108–1.

As in past consolidated appropriations acts that prohibited contracting with inverted domestic corporations, the prohibition does not apply when using Fiscal Year 2012 funds for a contract entered into before the date the funds were appropriated (December 23, 2011), or for any order issued pursuant to such contract. A paragraph has been added to FAR 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations, to refer to the FAR 9.108–2 exceptions to the prohibition.

**II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**III. Regulatory Flexibility Act**

The Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) do not expect this rule to 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 this rule will only impact an offeror that is an inverted domestic corporation and wants to do business with the Government. It is expected that the number of entities impacted by this rule will be minimal. Small business concerns are unlikely to have been incorporated in the United States and then reincorporated in a tax haven; the major players in these transactions are reportedly the very large multinational corporations. No domestic entities will be impacted by this rule. For the definition of “small business,” the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: “(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.” Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2012–013), in correspondence.

**IV. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**V. 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 because it implements section 738 of Division C of Public Law 112-74, which went into effect on December 23, 2011. Contracting officers who violate this prohibition may be subject to prosecution for violation of the Anti-Deficiency Act. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA 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 9 and 52**

Government procurement.  
Dated: May 3, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 9 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 9 and 52 continues 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 9—CONTRACTOR QUALIFICATIONS**

■ 2. Amend section 9.108-2 by—  
■ a. In paragraph (a), revising the first sentence; and removing from the second sentence “2008 and 2009” and adding “2008 through 2010” in its place; and  
■ b. Adding paragraph (b)(4).

The revised and added text reads as follows:

**9.108-2 Prohibition.**

(a) Section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74) prohibits the use of 2012 appropriated funds for contracting with any foreign incorporated entity

that is treated as an inverted domestic corporation, or with a subsidiary of such a corporation. \* \* \*

(b) \* \* \*

(4) When using Fiscal Year 2012 funds for any contract entered into before December 23, 2011, or for any order issued pursuant to such contract.

**9.108-3 [Amended]**

■ 3. Amend section 9.108-3 by removing from paragraph (a) “funds, an” and adding “funds or Fiscal Year 2012 funds, an” in its place.

**9.108-5 [Amended]**

■ 4. Amend section 9.108-5 by removing from the introductory text “2010, unless” and adding “2010 or in Fiscal Year 2012, unless” in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**52.204-8 [Amended]**

■ 5. Amend section 52.204-8 by revising the date of the provision to read “(MAY 2012)”; and removing from paragraph (c)(1)(v) “2008, 2009 or 2010” and adding “2008, 2009, 2010, or 2012” in its place.

■ 6. Amend section 52.209-10 by revising the date of the clause; and adding paragraph (c) to read as follows:

**52.209-10 Prohibition on Contracting with Inverted Domestic Corporations.**

\* \* \* \* \*

**Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012)**

\* \* \* \* \*

(c) Exceptions to this prohibition are located at 9.108-2.

\* \* \* \* \*

■ 7. Amend section 52.212-5 by revising the date of the clause, and paragraph (b)(8) to read as follows:

**52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

**Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (MAY 2012)**

\* \* \* \* \*

(b) \* \* \*

(8) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012) (section 738 of Division C of Pub. L. 112-74, section 740 of Division C of Pub. L. 111-117, section 743 of Division D of Pub. L.

111-8, and section 745 of Division D of Pub. L. 110-161).

\* \* \* \* \*

[FR Doc. 2012-11148 Filed 5-9-12; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 25 and 52**

**[FAC 2005-59; FAR Case 2012-012; Item II; Docket 2012-0012, Sequence 1 ]**

**RIN 9000-AM24**

**Federal Acquisition Regulation; Free Trade Agreement—Colombia**

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

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Colombia Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Colombia.

**DATES:** *Effective Date:* May 15, 2012.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before July 9, 2012 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-59, FAR Case 2012-012, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching “FAR Case 2012-012”. Select the link “Submit a Comment” that corresponds with “FAR Case 2012-012.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2012-012” on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005-59, FAR Case 2012-012, 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:** Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-59, FAR Case 2012-012.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR), to amend FAR part 25 and the corresponding provisions and clauses in FAR part 52 to implement the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note).

This Trade Promotion Agreement is designated in the FAR as the Colombia Free Trade Agreement (FTA). The FTA provides for—

- Waiver of the applicability of the Buy American statute (41 U.S.C. chapter 83) for some foreign supplies and construction materials from Colombia; and
- Applicability of specified procurement procedures designed to ensure fairness in the acquisition of supplies and services (see FAR 25.408).

**II. Discussion and Analysis**

This interim rule adds Colombia to the definition of “Free Trade Agreement country” in multiple locations in the FAR.

The Colombia FTA covers acquisition of supplies and services equal to or exceeding \$77,494. The threshold for the Colombia FTA is \$7,777,000 for construction. The excluded services for the Colombia FTA are the same as for the Bahrain FTA, Dominican Republic-Central American FTA, Chile FTA, NAFTA, Oman FTA, and Peru FTA.

Because the Colombia FTA construction threshold of \$7,777,000 is the same as the WTO GPA threshold, no new clause alternates are required for the Buy American Act—Construction Materials under Trade Agreements provision and clause (FAR 52.225-11 and 52.225-12) or the Recovery Act FAR clauses at 52.225-23 and 52.225-24.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this interim rule to 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.* Although the rule now opens up Government procurement to the goods and services of Colombia, DoD, GSA, and NASA do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at Defense Federal Acquisition Regulation Supplement 225.401-70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt. FAR 19.502-2 states that acquisitions of supplies or services with an anticipated dollar value between \$3,000 and \$150,000 (with some exceptions) are automatically reserved for small business concerns.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-59, FAR Case 2012-012), in correspondence.

**V. Paperwork Reduction Act**

This rule affects the certification and information collection requirements in the provisions at FAR 52.212-3, 52.225-4, 52.225-6, and 52.225-11 currently approved under OMB Control Numbers 9000-0136, 9000-0130, 9000-0025, and 9000-0141, respectively, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact,

however, is negligible because it is just a question of which category offered goods from Colombia would be listed under.

**VI. 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 because the effective date of the Free Trade Agreement with Colombia is May 15, 2012. This is a reciprocal agreement, approved by Congress and the President of the United States. It is important for the United States Government to honor its new trade obligations to Colombia, as Colombia in turn honors its new trade obligations to the United States. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA 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 25 and 52**

Government procurement.

Dated: May 3, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 25 and 52 continues 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 25—FOREIGN ACQUISITION**

**25.003 [Amended]**

- 3. Amend section 25.003 by removing from paragraph (2) of the definition “Designated country”, and the definition “Free Trade Agreement country” the words “Chile, Costa Rica” and adding the words “Chile, Colombia, Costa Rica” in their place.

- 4. Amend section 25.400 by removing from paragraph (a)(2)(ix) “; and” and adding “;” in its place; removing from paragraph (a)(2)(x) “;” and adding “; and” in its place; and adding paragraph (a)(2)(xi) to read as follows:

**25.400 Scope of subpart.**

(a) \* \* \*

(2) \* \* \*  
 (xi) Colombia FTA (the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note));  
 \* \* \* \* \*

**25.401 [Amended]**  
 ■ 5. Amend section 25.401 in the table that follows paragraph (b) by removing from the table heading “CAFTA-DR, Chile” and adding “CAFTA-DR, Colombia FTA, Chile” in its place.

■ 6. Amend section 25.402 by revising the table that follows paragraph (b) to read as follows:  
**25.402 General.**  
 \* \* \* \* \*  
 (b) \* \* \*

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA .....	\$202,000	\$202,000	\$7,777,000
FTAs:			
Australia FTA .....	77,494	77,494	7,777,000
Bahrain FTA .....	202,000	202,000	10,074,262
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) .....	77,494	77,494	7,777,000
Chile FTA .....	77,494	77,494	7,777,000
Colombia FTA .....	77,494	77,494	7,777,000
Korea FTA .....	100,000	100,000	7,777,000
Morocco FTA .....	202,000	202,000	7,777,000
NAFTA:			
—Canada .....	25,000	77,494	10,074,262
—Mexico .....	77,494	77,494	10,074,262
Oman FTA .....	202,000	202,000	10,074,262
Peru FTA .....	202,000	202,000	7,777,000
Singapore FTA .....	77,494	77,494	7,777,000
Israeli Trade Act .....	50,000	—	—

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 7. Amend section 52.212-5 by revising the date of the clause, and paragraphs (b)(40)(i) and (b)(41) to read as follows:

**52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (MAY 2012)**

\* \* \* \* \*

(b) \* \* \*  
 (40)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (MAY 2012) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, and 112-42).

\* \* \* \* \*

(41) 52.225-5, Trade Agreements (MAY 2012) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

\* \* \* \* \*

**52.225-3 [Amended]**

■ 8. Amend section 52.225-3 by revising the date of the clause to read “(MAY 2012)”; and in paragraph (a) removing from the definition “Free

Trade Agreement country” the words “Chile, Costa Rica” and adding the words “Chile, Colombia, Costa Rica” in their place.

**52.225-5 [Amended]**

■ 9. Amend section 52.225-5 by revising the date of the clause to read “(MAY 2012)”; and in paragraph (a) removing from paragraph (2) of the definition “Designated country” the words “Chile, Costa Rica” and adding the words “Chile, Colombia, Costa Rica” in their place.

**52.225-11 [Amended]**

■ 10. Amend section 52.225-11 by revising the date of the clause to read “(MAY 2012)”; and in paragraph (a) removing from paragraph (2) of the definition “Designated country” the words “Chile, Costa Rica” and adding the words “Chile, Colombia, Costa Rica” in their place.

**52.225-23 [Amended]**

■ 11. Amend section 52.225-23 by revising the date of the clause to read “(MAY 2012)”; and in paragraph (a) removing from paragraph (2) of the definitions “Designated country” and “Recovery Act designated country” the words “Chile, Costa Rica” and adding the words “Chile, Colombia, Costa Rica” in their place.

[FR Doc. 2012-11149 Filed 5-9-12; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 30 and 52**

[FAC 2005-59; FAR Case 2012-003; Item III; Docket 2012-0003, Sequence 1]

RIN 9000-AM25

**Federal Acquisition Regulation; Revision of Cost Accounting Standards Threshold**

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to revise the threshold for applicability of cost accounting standards in order to implement a recent rule of the Cost Accounting Standards Board and statutory requirements.

**DATES:** *Effective Date:* May 10, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward N. Chambers, Procurement Analyst, at 202-501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory

Secretariat at 202–501–4755. Please cite FAC 2005–59, FAR Case 2012–003.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Cost Accounting Standards (CAS) Board published a final rule in the **Federal Register** at 76 FR 79545, on December 22, 2011, which revised the threshold for the application of CAS from “\$650,000” to “the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))” in the CAS provisions and clauses at 48 CFR parts 9901 and 9903. The TINA threshold is adjusted every 5 years for inflation, as required by 41 U.S.C. 1908. Title 41 U.S.C. 1502(b)(1)(B) ties the CAS applicability threshold to the dollar value of the TINA threshold (currently \$700,000). The FAR cites the TINA threshold at FAR 15.403–4(a)(1).

**II. Discussion and Analysis**

This final rule revises the CAS applicability threshold from \$650,000 to \$700,000 at FAR 30.201–4 and the CAS clauses in the FAR at 52.230–1 through 52.230–5. The FAR replaced “\$650,000” with “\$700,000” rather than the phrase “the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))” (the phrase used by the CAS Board in its rule) as applicable. The FAR made this change from the CAS Board’s rule for improved clarity of FAR 30.201–4 and the CAS clauses in the FAR—stating the specific dollar value of the TINA threshold, rather than a reference to the TINA threshold as was done in the CAS Board’s final rule. In so doing, no further action will be required by the CAS Board to implement further adjustments for inflation in the future as permitted by the CAS Board’s rule; the CAS applicability thresholds in the FAR will be revised every 5 years in the future, whenever the TINA threshold is revised in the FAR as part of the statutory revision of the acquisition thresholds.

*Publication of This Final Rule for Public Comment Is Not Required by Statute*

“Publication of proposed regulations,” 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation,

procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it recognizes actions taken by the Cost Accounting Standards Board that have already been published for public comment; the changes in this rule are made to conform the FAR to the CAS Board final rule published in the **Federal Register** at 76 FR 79545, on December 22, 2011.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and does not require publication for public comment.

**V. Paperwork Reduction Act**

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 30 and 52**

Government procurement.

Dated: May 3, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 and 52 continues 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 30—COST ACCOUNTING STANDARDS ADMINISTRATION**

**30.201–4 [Amended]**

■ 2. Amend section 30.201–4 by removing from paragraph (b)(1) “\$650,000” and adding “\$700,000” in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**52.230–1 [Amended]**

■ 3. Amend section 52.230–1 by revising the date of the provision to read “(MAY 2012)”; and removing from paragraph (a) of the Disclosure Statement I “\$650,000” and adding “\$700,000” in its place.

**52.230–2 [Amended]**

■ 4. Amend section 52.230–2 by revising the date of the clause to read “(MAY 2012)”; and removing from paragraph (d) “\$650,000” and adding “\$700,000” in its place.

**52.230–3 [Amended]**

■ 5. Amend section 52.230–3 by revising the date of the clause to read “(MAY 2012)”; and removing from paragraph (d)(2) “\$650,000” and adding “\$700,000” in its place.

**52.230–4 [Amended]**

■ 6. Amend section 52.230–4 by revising the date of the clause to read “(MAY 2012)”; and removing from paragraph (d)(2) “\$650,000” and adding “\$700,000” in its place.

**52.230–5 [Amended]**

■ 7. Amend section 52.230–5 by revising the date of the clause to read “(MAY 2012)”; and removing from paragraph (d)(2) “\$650,000” and adding “\$700,000” in its place.

[FR Doc. 2012–11151 Filed 5–9–12; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2012–0081, Sequence 4]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–59; Small Entity Compliance Guide**

**AGENCY:** 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 DOD, GSA, and NASA. 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 the rule appearing in Federal Acquisition Circular (FAC) 2005–59, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2005–59, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**DATES:** May 10, 2012.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–59 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–59

Item	Subject	FAR Case	Analyst
I	Prohibition on Contracting with Inverted Domestic Corporations .....	2012–013	Jackson.
II	Free Trade Agreement—Colombia .....	2012–012	Davis.
III	Revision of Cost Accounting Standards Threshold .....	2012–003	Chambers.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–59 amends the FAR as specified below:

**Item I—Prohibition on Contracting With Inverted Domestic Corporations (FAR Case 2012–013) (Interim)**

This interim rule implements section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), which prohibits the award of contracts using Fiscal Year 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity. This interim rule extends an existing prohibition that applied to use of Fiscal Years 2008 through 2010 funds. Contracting officers are prohibited from awarding contracts using appropriated

funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity, unless an exception applies. The exceptions are at FAR 9.108–2. This rule is not expected to have an effect on small business because this rule will only impact an offeror that is an inverted domestic corporation and wants to do business with the Government. Small business concerns are unlikely to have been incorporated in the United States and then reincorporated in a tax haven.

**Item II—Free Trade Agreement—Colombia (FAR Case 2012–012)**

This interim rule implements a new Free Trade Agreement with Colombia (see the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42) (19 U.S.C. 3805 note)).

This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from

Colombia. This interim rule is not expected to have a significant economic impact on a substantial number of small entities.

**Item III—Revision of Cost Accounting Standards Threshold (FAR Case 2012–003)**

This final rule revises the cost accounting standards (CAS) threshold in order to implement in the FAR a recent rule of the Cost Accounting Standards Board and statutory requirements. The threshold now equals the Truth in Negotiations Act (TINA) threshold, currently \$700,000. There is no impact on small businesses as they are exempt from CAS pursuant to 48 CFR 9903.201–1(b).

Dated: May 3, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2012–11152 Filed 5–9–12; 8:45 am]

**BILLING CODE 6820–EP–P**