

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR–2006–0023, Sequence 5]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2005–13;  
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) 2005-13. 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 or  
subject area. Please cite FAC 2005-13  
and 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 2005–13**

Item	Subject	FAR case	Analyst
*I .....	Implement OMB Policy on the Use of Brand Name Specifications (Interim) .....	2005–037	Davis.
*II .....	Information Technology Security .....	2004–018	Davis.
III .....	Online Representations and Certifications Application (ORCA) Archiving Capability (Interim) .....	2005–025	Woodson.
*IV .....	Inflation Adjustment of Acquisition-Related Thresholds .....	2004–033	Jackson.
V .....	Trade Agreements—Thresholds .....	2005–030	Parnell.
VI .....	Reporting of Purchases from Overseas Sources (Interim) .....	2005–034	Olson.
*VII .....	Exception to the Buy American Act for Commercial Information Technology .....	2005–022	Olson.
VIII .....	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 2005–13 amends the FAR as  
specified below:

**Item I—Implement OMB Policy on the  
Use of Brand Name Specifications  
(Interim) (FAR Case 2005-037)**

This interim rule amends the Federal  
Acquisition Regulation (FAR) to  
implement the memoranda issued by  
the Office of Management and Budget  
dated April 11, 2005 and April 17, 2006,  
requiring agencies to publish on the  
Governmentwide point of entry (GPE) or  
e-Buy the documentation required by  
the FAR to support the use of a brand  
name specification. The rule is intended  
to limit the use of brand name  
specifications and provide for maximum  
competition.

**Item II—Information Technology  
Security (FAR Case 2004-018)**

This final rule amends the interim  
rule published September 30, 2005, as  
corrected on November 14, 2005, to a  
final rule without change. The interim  
rule amended FAR Parts 1, 2, 7, 11, and  
39 to implement the Information  
Technology (IT) Security provisions of  
the Federal Information Security  
Management Act of 2002 (FISMA),

(Title III of Public Law 107-347, the E-  
Government Act of 2002 (E-Gov Act)).  
The rule focuses on the importance of  
system and data security by contracting  
officials and other members of the  
acquisition team. The intent of adding  
specific guidance in the FAR is to  
provide clear, consistent guidance to  
acquisition officials and program  
managers; and to encourage and  
strengthen communication with IT  
security officials, chief information  
officers, and other affected parties.

**Item III—Online Representations and  
Certifications Application (ORCA)  
Archiving Capability (Interim)(FAR  
Case 2005-025)**

This interim rule amends FAR Parts 4,  
12, 14, and 15 to address the record  
retention policy where the Online  
Representations and Certifications  
Application (ORCA) is used to submit  
an offeror’s representations and  
certifications. Under FAR Subpart 4.12,  
prospective contractors are required to  
submit Annual Representations and  
Certifications via the ORCA. Data in  
ORCA is archived and electronically  
retrievable. Therefore, when a  
prospective contractor has completed  
representations and certifications  
electronically via ORCA, the contracting  
officer may reference the date of ORCA  
verification in the associated  
Government contract file rather than  
including a paper copy of the

electronically-submitted representations  
and certifications in the file. Such a  
reference satisfies contract file  
documentation requirements of  
4.803(a)(11). However, if an offeror  
identifies changes to ORCA data  
pursuant to the FAR provisions at  
52.204-8(c) or 52.212-3(k), the  
contracting officer must include a copy  
of the changes in the contract file.

**Item IV—Inflation Adjustment of  
Acquisition-Related Thresholds (FAR  
Case 2004-033)**

This final rule adjusts acquisition-  
related thresholds in the FAR for  
inflation. It implements Section 807 of  
the Ronald W. Reagan National Defense  
Authorization Act for Fiscal Year 2005  
(Pub. L. 108-375). Section 807 provides  
for adjustment every 5 years of  
acquisition-related thresholds, except  
for Davis-Bacon Act, Service Contract  
Act, and trade agreements thresholds.  
This rule also escalates some  
nonstatutory acquisition-related  
thresholds. Often any impact of these  
threshold increases will be beneficial,  
by preventing burdensome requirements  
from applying to more and more small  
dollar value acquisitions, which are the  
acquisitions in which small businesses  
are most likely to participate. One  
threshold change in this rule which may  
temporarily impact small business is the  
increase of the micro-purchase  
threshold (FAR 2.101) from \$2,500 to

\$3,000, because the simplified acquisition threshold will not be raised at this time. Other frequently used thresholds that are adjusted include—

- The FPDS reporting threshold (FAR 4.602(c)) will be raised from \$2,500 to \$3,000.
- Commercial Items test program ceiling (FAR 13.500) will be raised from \$5,000,000 to \$5,500,000.
- The cost and pricing data threshold (FAR 15.403-4) will be raised from \$550,000 to \$650,000.

The prime contractor subcontracting plan (FAR 19.702) floor will be raised from \$500,000 to \$550,000, but for construction (\$1,000,000) is unchanged.

#### **Item V—Trade Agreements—Thresholds (FAR Case 2005-030)**

This final rule converts the interim rule published at 71 FR 864, January 5, 2006, to a final rule without change. This rule changes the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements with Canada, Mexico, Chile, Singapore, and Australia. These threshold increases occur every two years in order to keep pace with inflation.

#### **Item VI—Reporting of Purchases from Overseas Sources (Interim) (FAR Case 2005-034)**

This interim rule amends FAR Part 25 and adds a provision in FAR 52.225 to implement Section 837 of Division A of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109-115). Section 837 requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies that are manufactured outside the United States. The new provision requests from offerors necessary data regarding place of manufacture. The new provisions will require an offeror to indicate whether the place of manufacture of the end products it expects to provide in response to the solicitation is predominantly inside or outside the United States. Whenever the place of manufacture for a contract is coded outside the United States, the contracting officer will be required to enter into Federal Procurement Data System (FPDS) the reason for buying items manufactured outside the United States.

#### **Item VII—Exception to the Buy American Act for Commercial Information Technology (FAR Case 2005-022)**

This final rule converts the interim rule published at 71 FR 223, January 3, 2006, to a final rule without change. This final rule amends FAR 25.103 and Subpart 25.11 to implement Section 535(a) of Division F of the Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts. Section 535(a) authorizes an exception to the Buy American Act for acquisitions of information technology that are commercial items. The final rule applies to all offerors responding to solicitations for commercial information technology where the Buy American Act previously applied (generally, acquisitions between the micro-purchase threshold and \$193,000). The effect of this exemption is that the following clauses are no longer applicable in acquisition of commercial information technology:

- FAR 52.225-1, Buy American Act—Supplies,
- FAR 52.225-2, Buy American Act Certificate,
- FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act,
- FAR 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

This is because the Buy American Act no longer applies. The Free Trade Agreement non-discriminatory provisions are no longer necessary since all products now are treated without the restrictions of the Buy American Act.

The Trade Agreements provision and clause at FAR 52.225-5 and FAR 52.225-6 are still necessary when the Trade Agreements Act applies (acquisitions above \$193,000). The Trade Agreements provision and clause already waive applicability of the Buy American Act for eligible products and are needed to implement the restrictions on procurement of noneligible end products. Section 535 and subsequent similar sections waived only the Buy American Act, not all restrictions on the purchase of foreign information technology.

#### **Item VIII—Technical Amendments**

Editorial changes are made at FAR 1, 3, 4, 5, 7, 13, 26, 33, 49, 50, 52, and 53 in order to update references.

Dated: September 19, 2006.

**Ralph De Stefano,**  
*Director, Contract Policy Division.*

#### **Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005-13 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 2005-13 is effective September 28, 2006.

Dated: September 19, 2006.

**Roger D. Waldron,**  
*Acting Senior Procurement Executive,*  
*General Services Administration.*

Dated: September 8, 2006.

**Shay D. Assad,**  
*Director, Defense Procurement and Acquisition Policy.*

Dated: September 12, 2006.

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

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 5, 6, 8, 11, and 13**

**[FAC 2005-13; FAR Case 2005-037; Item I; Docket 2006-0020, Sequence 10]**

**RIN 9000-AK55**

#### **Federal Acquisition Regulation; FAR Case 2005-037, Implement OMB Policy on the Use of Brand Name Specifications**

**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 to amend the Federal Acquisition Regulation (FAR) to require agencies to publish on the Governmentwide point of entry (GPE) or e-Buy the documentation required by