

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2009-0001, Sequence 7]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-36; 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) 2005-36. 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 2005-36 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 2005-36**

Item	Subject	FAR case	Analyst
I	Federal Technical Data Solution (FedTeDS)	2008-038	Loeb.
II	Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses	2007-021	Murphy.
III	New Designated Country—Taiwan	2009-014	Murphy.
IV	Prohibition on Restricted Business Operations in Sudan and Imports from Burma	2008-004	Murphy.
V	List of Approved Attorneys, Abstractors, and Title Companies	2006-013	Chambers.
VI	Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses.	2007-002	Chambers.
VII	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 2005-36 amends the FAR as specified below:

**Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2008-038)**

This final rule amends the Federal Acquisition Regulation (FAR) subparts 5.1, 5.2, and 7.1 to remove all references to the Federal Technical Data Solution (FedTeDS) System, and refer to the enhanced capabilities of the Governmentwide Point of Entry (GPE) system. The FedTeDS system was used to post on-line technical data packages and other items associated with solicitations that required some level of access control. It was interfaced directly with the GPE system. In April 2008, the newest version of the GPE was launched. This version incorporated the capabilities of FedTeDS, allowing the FedTeDS system to be retired. This rule will only have a slight impact on Government. It will inform and direct both internal and external users to the new system and website. This rule does not have a significant impact on any automated systems.

**Item II—Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses (FAR Case 2007-021)**

This final rule amends the Federal Acquisition Regulation (FAR) to specifically require the incorporation of FAR clauses 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) and 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in time-and-materials and labor-hour service contracts that are subject to the Service Contract Act.

**Item III—New Designated Country—Taiwan (FAR Case 2009-014) (Interim)**

This interim rule implements in FAR Parts 22, 25, and 52, as appropriate, the designation of Taiwan under the World Trade Organization Agreement on Government Procurement, which took effect on July 15, 2009. This FAR change allows contracting officers to purchase goods and services made in Taiwan without application of the Buy American Act if the acquisition is covered by the World Trade Organization Agreement on Government Procurement.

**Item IV—Prohibition on Restricted Business Operations in Sudan and Imports from Burma (FAR Case 2008-004)**

This final rule converts the interim rule published in the **Federal Register** at 73 FR 33636 on June 12, 2008, to a final rule with changes. This final rule implements Section 6 of the Sudan Accountability and Divestment Act of 2007, which requires certification in each contract entered into by an executive agency that the contractor does not conduct certain business operations in Sudan. In addition, in accordance with Executive Orders 13310 and 13448, the Councils added Burma to the list of countries from which most imports are prohibited.

**Item V—List of Approved Attorneys, Abstractors, and Title Companies (FAR Case 2006-013)**

This final rule amends Federal Acquisition Regulation (FAR) 28.203-3 and 52.228-11 to update the procedures for the acceptance of a bond with a security interest in real property. The FAR has relied on the Department of Justice (DOJ) to provide a “List of Approved Attorneys, Abstractors, and Title Companies”. However, DOJ has discontinued maintenance of the List. Replacing the List, DOJ published “Title Standards 2001”, establishing the evidence requirements for acceptance of

title to real property for individual sureties.

The rule also provides that in lieu of evidence of title that is consistent with DOJ standards, that sureties may provide a mortgagee title insurance policy in an insurance amount equal to the amount of the lien.

#### Item VI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (FAR Case 2007–002)

This final rule converts, without change, the interim rule published in the **Federal Register** at 73 FR 54011 September 17, 2008. No comments were received in response to the interim rule. The interim rule amended the Federal Acquisition Regulation (FAR) to revise FAR 30.201–4(b)(1) and FAR 52.230–1 through 52.230–5 to maintain consistency between the Federal Acquisition Regulation (FAR) and Cost Accounting Standards (CAS) regarding the administration of the CAS Board's rules, regulations and standards.

Effective June 14, 2007, the CAS Board amended the contract clauses contained in its rules and regulations at 48 CFR 9903.201–4, pertaining to the administration of CAS, to adjust the CAS applicability threshold in accordance with section 822 of the 2006 National Defense Authorization Act (Pub. L. 109–163). That section amended 41 U.S.C. 422(f)(2)(A) to require that the threshold for CAS applicability be the same as the threshold for compliance with the Truth in Negotiations Act (TINA).

#### Item VII—Technical Amendments

Editorial changes are made at FAR 32.503–9, 52.213–4, and 52.244–6.

Dated: August 4, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

Federal Acquisition Circular (FAC) 2005–36 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 2005–36 is effective August 11, 2009, except for Items I, II, and V, which are effective September 10, 2009.

Dated: August 3, 2009.

**Shay D. Assad,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: August 3, 2009.

**Rodney P. Lantier,**

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

Dated: August 3, 2009.

**William P. McNally,**

*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 and 7

[FAC 2005–36; FAR Case 2008–038; Item I; Docket 2009–0028, Sequence 1]

RIN 9000–AL32

#### Federal Acquisition Regulation; FAR Case 2008–038, Federal Technical Data Solution (FedTeDS)

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to reflect that FedTeDS capabilities have been incorporated into the Governmentwide Point of Entry (GPE). References to FedTeDS are amended to reflect the GPE i.e., FedBizOpps system.

**DATES:** *Effective Date:* September 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Ed Loeb, Director, Contract Policy Division at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–36, FAR case 2008–038.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Federal Technical Data Solution (FedTeDS) is the system that was used

for the past several years to post on-line technical data packages and other items associated with solicitations that required some level of access control. It was interfaced directly with the Governmentwide Point of Entry (GPE) i.e., FedBizOpps system. In April 2008, a new version of the GPE was launched. This version incorporated the capabilities of FedTeDS, thereby allowing FedTeDS to be retired. FAR Sections 5.102, 5.207 and 7.105 will be amended to (1) remove all references to FedTeDS and refer to the enhanced controls of the GPE, (2) address technical data availability via GPE in lieu of FedTeDS, and (3) substitute GPE in lieu of FedTeDS in references to acquisition plans.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 5 and 7 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–36, FAR case 2008–038), in all correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 5 and 7

Government procurement.

Dated: August 4, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5 and 7 as set forth below:

■ 1. The authority citation for 48 CFR parts 5 and 7 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).