

**BUY AMERICAN ACT—
CONSTRUCTION MATERIALS UNDER
TRADE AGREEMENTS (SEP 2010)**

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(b) * * *

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket FAR 2010-0077, Sequence 8]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005-46;
Small Entity Compliance Guide**

AGENCIES: 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 the Secretary of Defense, the Administrator of General Services and the Administrator of the National

Aeronautics and Space Administration. 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 rules appearing in Federal Acquisition Circular (FAC) 2005-46 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005-46, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

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

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005-46 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

LIST OF RULES IN FAC 2005-46

Item	Subject	FAR case	Analyst
I	Equal Opportunity for Veterans (Interim)	2009-007	Woodson.
II	Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (Interim)	2010-012	Davis.
III	Termination for Default Reporting	2008-016	Parnell.
IV	Award-Fee Language Revision	2008-008	Chambers.
V	Offering a Construction Requirement-8(a) Program	2009-020	Morgan.
VI	Encouraging Contractor Policies to Ban Text Messaging While Driving (Interim)	2009-028	Clark.
VII	Buy American Exemption for Commercial Information Technology—Construction Material (Interim)	2009-039	Davis.

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 number and subject set forth in the documents following these item summaries.

FAC 2005-46 amends the FAR as specified below:

Item I—Equal Opportunity for Veterans (FAR Case 2009-007) (Interim)

This interim rule with request for comments implements the Department of Labor’s (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule published in the **Federal Register** at 72 FR 44393 on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans’ Readjustment Assistance Act of 1972 (VEVRAA), as amended by the Jobs for Veterans Act (JVA). The rule re-titles FAR subpart 22.13 from “Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans” to “Equal Opportunity for Veterans.” Accordingly, FAR clause 52.222-35 is also renamed “Equal Opportunity for Veterans” and

incorporates the new categories and definitions of protected veterans as established by DoL. In addition, the FAR clause at 52.222-37, “Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans” is renamed “Employment Reports on Veterans” and the new DoL requirements for using the VETS-100A report are incorporated. Lastly, the FAR provision at 52.222-38, “Compliance with Veterans’ Employment Reporting Requirements,” is revised to incorporate new title references for FAR 52.222-37 and the new report form VETS-100A.

Item II—Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (FAR Case 2010-012) (Interim)

This interim rule amends the FAR by enhancing efforts to enforce sanctions with Iran. The rule implements requirements imposed by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), specifically sections 102 and 106. To implement section 102, the FAR will require

certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. This rule also partially implements section 106 of Public Law 111-195, which imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of Section 106 in FAR Case 2010-018. This rule will have little effect on United States small business concerns, because such dealings with Iran are already prohibited in the United States.

Item III—Termination for Default Reporting (FAR Case 2008-016)

This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR parts 8, 12, 15, 42, and 49. The purpose of the rule is to establish procedures for contracting officers to provide contractor information into the Federal Awardee Performance & Integrity Information System (FAPIS) module of Past

Performance Information System (PIRS). This case sets forth requirements for reporting defective cost or pricing data and terminations for cause or default and any amendments. Evaluation of past performance information, especially terminations, manages risks associated with timely, effective and cost efficient completion of contracts, a key objective of the President's March 4, 2009, Memorandum on Government Contracting.

Item IV—Award-Fee Language Revision (FAR Case 2008–008)

This final rule converts the interim rule published in the **Federal Register** at 74 FR 52856 on October 14, 2009, to a final rule with minor changes.

This final rule amends the FAR to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and section 867 of the Duncan Hunter 2009 National Defense Authorization Act for Fiscal Year 2009. This rule requires agencies to—

(1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) Clarify that a base fee amount greater than zero may be included in a cost-plus-award-fee type contract at the discretion of the contracting officer;

(3) Prescribe narrative ratings that will be utilized in award-fee evaluations;

(4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) Conduct a risk and cost-benefit analysis and consider the results of the analysis when determining whether to use an incentive-fee type contract or not;

(6) Include specific content in the award-fee plans; and

(7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

Item V—Offering a Construction Requirement—8(a) Program (FAR Case 2009–020)

This final rule amends the FAR to revise FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), specifically FAR 19.804–2(b) to conform to the Small Business Administration (SBA) regulations. The SBA regulation 13 CFR 124.502(b)(2) requires that the offering letter for an open construction requirement be submitted to the SBA District Office for the geographical area where the work is to be performed. The SBA regulation 13 CFR 124.502(b)(3) requires that the offering letter for a construction requirement offered on behalf of a specific participant be submitted to the SBA District Office servicing that concern. This rule revises FAR 19.804–2 accordingly.

Item VI—Encouraging Contractor Policies To Ban Text Messaging While Driving (FAR Case 2009–028) (Interim)

This interim rule amends the FAR to implement Executive Order 13513, entitled “Federal Leadership on Reducing Text Messaging while Driving,” which was issued on October 1, 2009 (74 FR 51225, October 6, 2009). Section 4 of the Executive order requires

each Federal agency, in procurement contracts, entered into after the date of the order, to encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Section 4 also requires Federal agencies to encourage contractors to conduct initiatives such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts. Contracting officers are encouraged to modify existing contracts to include the FAR clause.

Item VII—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009–039) (Interim)

This interim rule implements section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

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