

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2011–0076, Sequence 4]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–52; 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 DoD, GSA, and NASA in this Federal Acquisition Circular (FAC) 2005–52. 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 2005–52 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 2005–52

Item	Subject	FAR case	Analyst
I .....	Sustainable Acquisition .....	2010–001	Clark.
II .....	Contract Closeout .....	2008–020	McFadden.
III .....	Prohibition on Contracting with Inverted Domestic Corporations .....	2008–009	Davis.
IV .....	Buy American Exemption for Commercial Information Technology—Construction Material .....	2009–039	Davis.
V .....	Oversight of Contractor Ethics Programs .....	2010–017	Robinson.
VI .....	Technical Amendments.		

**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 2005–52 amends the FAR as specified below:

**Item I—Sustainable Acquisition (FAR Case 2010–001) (Interim)**

This interim rule amends the FAR to implement Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. It requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies, materials, products, and services. Federal agencies are additionally required to implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices in applicable acquisitions. Contractors will be required to support the goals of an agency’s environmental management system.

**Item II—Contract Closeout (FAR Case 2008–020)**

This final rule amends the FAR procedures for closing out contracts. A proposed rule was published August 20,

2009. This rule revises procedures and sets forth a timeframe for clearing final patent reports; updates quick-closeout procedures, including applicable thresholds; sets forth a description of an adequate final indirect cost rate proposal and supporting data; and adds language for withholding fees to protect the Government’s interest and encourage timely submissions of an adequate final indirect cost rate proposal. The rule does not impose any additional requirements on small businesses.

**Item III—Prohibition on Contracting With Inverted Domestic Corporations (FAR Case 2008–009)**

This final rule implements section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) and similar restrictions in 2008 and 2009 appropriations acts, which prohibit 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 one, except as permitted in specific exceptions as set forth in the rule. The rule does not impose any requirements on small businesses.

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

This rule adopts as final, without change, an interim rule. The interim rule amended the FAR to implement

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.

**Item V—Oversight of Contractor Ethics Programs (FAR Case 2010–017)**

This final rule modifies FAR 42.302, Contract Administration Functions, to add to the list of contract administration functions, the function of ensuring that contractors have implemented FAR 52.203–13, Contractor Code of Business Ethics and Conduct.

Contracting officers may ask to see a contractor’s code of ethics or a contractor’s ethics program, but the contracting officer is not required to ask for a copy of any documents.

**Item VI—Technical Amendments**

Editorial changes are made at FAR 52.212–3, 53.301–1447, 53.301–1449, and 52.302–347.

Dated: May 18, 2011.

**Millisa Gary,**  
*Acting Director, Office of Governmentwide Acquisition Policy.*

Federal Acquisition Circular (FAC) 2005–52 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 2005–52 is effective May 31, 2011, except for Items II and V which are effective June 30, 2011.

Dated: May 18, 2011.

**Shay D. Assad,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: May 17, 2011.

**Joseph A. Neurauter,**

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

Dated: May 17, 2011.

**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 1, 2, 4, 5, 7, 11, 12, 13, 23, 36, 37, 39, and 52**

[FAC 2005–52; FAR Case 2010–001; Item I; Docket 2010–0001, Sequence 1]

RIN 9000–AL96

### Federal Acquisition Regulation; Sustainable Acquisition

**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 Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. This interim rule requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies, materials, products, and services. Federal agencies are additionally required to implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices in applicable acquisitions. Contractors will be required to support the goals of an

agency's environmental management system.

**DATES:** *Effective Date:* May 31, 2011.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before August 1, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–52, FAR Case 2010–001, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2010–001” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2010–001.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2010–001” 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 2005–52, FAR Case 2010–001, 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. William Clark, Procurement Analyst, at (202) 219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–52, FAR Case 2010–001.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the face of changing environmental circumstances and our Nation's heightened energy demands, the Federal Government must lead by example to create a clean energy economy that will increase prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment. Executive Order 13514 (E.O. 13514), Federal Leadership in Environmental, Energy, and Economic Performance, was signed on October 5, 2009 (74 FR 52117, October 8, 2009). It requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies and materials, products, and services. The head of each agency shall advance

sustainable acquisition by ensuring that 95 percent of new contract actions, including task and delivery orders, for products and services, with the exception of acquisition of weapon systems, are energy-efficient (Energy Star or Federal Energy Management Program (FEMP)-designated), water-efficient, biobased, environmentally preferable (e.g., Electronic Product Environmental Assessment Tool (EPEAT)-registered), non-ozone depleting, contain recycled content, or are non-toxic or less toxic alternatives, where such products and services meet agency performance requirements. Federal agencies are also required to design, construct, maintain and operate high-performance sustainable buildings in sustainable locations.

Similarly, recognizing the long-term impact that Federal environmental management can have on national health and security, Executive Order 13423 (E.O. 13423), Strengthening Federal Environmental, Energy, and Transportation Management, was signed on January 24, 2007 (72 FR 3919, January 26, 2007). E.O. 13423 establishes the policy that Federal agencies shall conduct their environmental, transportation, and energy-related activities in an environmentally, economically, and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.

The authorities throughout the applicable FAR parts are updated to include E.O. 13423 and E.O. 13514. Additionally, authorities throughout the applicable FAR parts are updated to delete references to E.O. 13101, E.O. 13123, and E.O. 13148, because the Executive orders were revoked by E.O. 13423.

Under FAR part 2, the definitions for “renewable energy” and “United States” are revised to reflect the latest definitions of the terms in E.O. 13514. A new definition for “sustainable acquisition,” derived from the definition of “sustainable” in E.O. 13514, is added to FAR part 2. The definition of “water consumption intensity” is also added to FAR part 2 from E.O. 13514.

FAR part 4 changes include revisions to the policy for contractor submission of paper documents to the Government and updating the general description of the Federal Procurement Data System (FPDS). In efforts to reduce or prevent waste and meet the intent of the agencies' requirement to purchase at least 30 percent postconsumer fiber content paper as directed in both E.O. 13423 and E.O. 13514, contractors are required, if not using electronic commerce methods, to submit paper