

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket No. FAR 2014–0052, Sequence No. 7]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2005–79;  
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 rules appearing in  
Federal Acquisition Circular (FAC)  
2005–79, which amends the Federal  
Acquisition Regulation (FAR). An  
asterisk (\*) next to a rule indicates that  
a regulatory flexibility analysis has been  
prepared. Interested parties may obtainfurther information regarding these  
rules by referring to FAC 2005–79,  
which precedes this document. These  
documents are also available via the  
Internet at <http://www.regulations.gov>.**DATES:** December 15, 2014.**FOR FURTHER INFORMATION CONTACT:** For  
clarification of content, contact the  
analyst whose name appears in the table  
below. Please cite FAC 2005–79 and the  
FAR case number. For information  
pertaining to status or publication  
schedules, contact the Regulatory  
Secretariat at 202–501–4755.

Item	Subject	FAR Case	Analyst
*I .....	Establishing a Minimum Wage for Contractors .....	2015–003	Loeb
II .....	Prohibition on Contracting with Inverted Domestic Corporations .....	2014–017	Jackson

**SUPPLEMENTARY INFORMATION:**Summaries for each FAR rule follow.  
For the actual revisions and/or  
amendments made by these rules, refer  
to the specific item numbers and  
subjects set forth in the documents  
following these item summaries. FAC  
2005–79 amends the FAR as specified  
below:**Item I—Establishing a Minimum Wage  
for Contractors (FAR Case 2015–003)**DoD, GSA, and NASA are issuing an  
interim rule amending the FAR to  
implement Executive Order (E.O.) 13658  
and a Department of Labor (DOL) final  
rule issued on October 7, 2014, both  
entitled Establishing a Minimum Wage  
for Contractors. The interim rule  
establishes a new minimum wage for  
covered service and construction  
contracts of \$10.10 per hour, which will  
be adjusted annually, by the DOL.  
Contracting officers will include a  
clause in covered contracts and, if  
requested by the contractor and if  
appropriate, will adjust contract prices  
for the annual adjustments in the E.O.  
minimum wage. Contractors shall  
consider any subcontractor request,  
including requests by small businesses  
subcontractors, for a subcontract price  
adjustment due to the annual  
adjustment in the E.O. minimum wage.**Item II—Prohibition on Contracting  
With Inverted Domestic Corporations  
(FAR Case 2014–017)**This interim rule amends the  
provisions of the FAR that address the  
continuing Governmentwide statutory  
prohibition (in effect since fiscal year  
(FY) 2008) on the award of contracts  
using appropriated funds to any foreignincorporated entity that is an inverted  
domestic corporation (under section 835  
of the Homeland Security Act of 2002,  
codified at 6 U.S.C. 395) or to any  
subsidiary of such entity. In particular,  
this rule amends FAR 9.108 to revise the  
FAR coverage, including the language of  
solicitation provisions and contract  
clauses, so that it more clearly reflects  
the ongoing, continuing nature of the  
statutory prohibition on contracting  
with inverted domestic corporations  
and their subsidiaries.This rule is not expected to have an  
effect on small business because this  
rule will only impact an offeror that is  
a foreign incorporated entity that is  
treated as 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.

Dated: December 5, 2014.

**William Clark,***Acting Director, Office of Government-wide  
Acquisition Policy, Office of Acquisition  
Policy, Office of Government-wide Policy.*

[FR Doc. 2014–29148 Filed 12–12–14; 8:45 am]

**BILLING CODE 6820–EP–P****DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 9 and 52**[FAC 2005–79; FAR Case 2014–017; Item  
II; Docket No. 2014–0017, Sequence No. 1]**RIN 9000–AM70****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  
provisions of the Federal Acquisition  
Regulation (FAR) that address the  
continuing Governmentwide statutory  
prohibition on the use of appropriated  
(or otherwise made available) funds for  
contracts with any foreign incorporated  
entity that is an inverted domestic  
corporation or any subsidiary of such  
entity.**DATES:** *Effective:* December 15, 2014.*Comment Date:* Interested parties  
should submit written comments to the  
Regulatory Secretariat on or before  
February 13, 2015 to be considered in  
the formation of the final rule.**ADDRESSES:** Submit comments  
identified by FAC 2005–79, FAR Case

2014–017, by any of the following methods:

- *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2014–017”. Select the link “Comment Now” that corresponds with “FAR Case 2014–017”. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2014–017” on your attached document.

- *Fax*: 202–501–4067.

- *Mail*: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd floor, Washington, DC 20405.

*Instructions*: Please submit comments only and cite FAC 2005–79, FAR Case 2014–017, 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 2005–79, FAR Case 2014–017.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

This interim rule amends the provisions of the FAR that address the continuing Governmentwide statutory prohibition (in effect since Fiscal Year (FY) 2008) on the use of appropriated (or otherwise made available) funds for contracts with any foreign incorporated entity that is an inverted domestic corporation (under section 835 of the Homeland Security Act of 2002, codified at 6 U.S.C. 395) or to any subsidiary of such entity. By separate notice, DOD, GSA, and NASA are issuing a proposed rule (FAR Case 2015–006) that would require additional actions by contractors to assist contracting officers in ensuring compliance with the statutory prohibition. An inverted domestic corporation is a corporation that meets the criteria specified in 6 U.S.C. 395(b) and (c).

In particular, this rule amends FAR 9.108 and the associated solicitation provisions and contract clauses, so that it more clearly reflects the ongoing, continuing nature of the statutory prohibition on contracting with inverted domestic corporations and their subsidiaries.

Beginning with section 745 of Division D of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161), and in all subsequent fiscal years, Congress in the annual appropriations acts and continuing resolutions (CRs) has imposed a continuous Governmentwide statutory prohibition against using appropriated funds to contract with either an inverted domestic corporation (as defined in section 835 of the Homeland Security Act of 2002, codified at 6 U.S.C. 395) or a subsidiary of an inverted domestic corporation.

- In FY 2009, the statutory prohibition was continued by the FY 2009 short-term CR (Pub. L. 110–329, as extended by Pub. L. 111–6), under the general terms of the CR, and by section 743 of Division D of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8).

- In FY 2010, the statutory prohibition was continued by the FY 2010 short-term CR (Pub. L. 111–68, as extended by Pub. L. 111–88), under the general terms of the CR, and by section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117).

- In FY 2011, the statutory prohibition was continued by the FY 2011 short-term CR (Pub. L. 111–242, as extended by Public Laws 111–290, 111–317, 111–322, 112–4, 112–6, and 112–8) and full-year CR (Pub. L. 112–10), under the general terms of the CRs.

- In FY 2012, the statutory prohibition was continued by the FY 2012 short-term CR (Pub. L. 112–33, as extended by Public Laws 112–36, 112–67, and 112–68), under the general terms of the CR, and by section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74).

- In FY 2013, the statutory prohibition was continued by the FY 2013 short-term CR (Pub. L. 112–175) and full-year CR (Pub. L. 113–6), under the general terms of the CRs.

- In FY 2014, the statutory prohibition was continued by the FY 2014 short-term CR (Pub. L. 113–46), under the general terms of the CR, and by section 733 of Division E of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76).

- In FY 2015, the statutory prohibition is currently being continued by the FY 2015 short-term CR (the Continuing Appropriations Resolution, 2015; Pub. L. 113–164), under the general terms of the CR.

The prohibition on contracting with inverted domestic corporations is addressed at FAR 9.108. In the years since the Governmentwide prohibition

was first enacted in FY 2008, the FAR Council has sought to update this FAR section to reflect the enactment of new appropriations acts. See FAR Case 2008–009 which was published as an interim rule in the **Federal Register** at 74 FR 31561 on July 1, 2009, and as a final rule at 76 FR 31410 on May 31, 2011, and FAR Case 2012–013 published as an interim rule at 77 FR 27547 on May 10, 2012, and as a final rule at 78 FR 6185 on January 29, 2013.

Insofar as Congress has retained the statutory prohibition in place since FY 2008, this interim rule amends FAR 9.108–2, 9.108–3, and 9.108–5 to reflect the ongoing nature of the prohibition for as long as Congress extends the prohibition in its current form through subsequent appropriations action (in full-year appropriations acts and in short-term and full-year CRs).

This interim rule also makes several technical revisions to the coverage in FAR 9.108 to state more clearly when a corporation is covered by the prohibition. In particular, it eliminates unclear discussion and references in the definition of “inverted domestic corporation”.

In addition, the interim rule simplifies the coverage addressing exceptions. Specifically, the interim rule deletes a long listing of exceptions that accurately reflected exceptions set forth in the applicable appropriations acts, but had become increasingly difficult to understand with the passage of each appropriations act. Instead, the interim rule explains that each appropriations provision addressing the prohibition included an exception stating that the section shall not apply to any Federal Government contract entered into before the date of the enactment of the Act, or to any task order issued pursuant to such contract. Effectively, the prohibition does not extend to additional work that is performed under the contract if that additional work is funded by appropriations that are provided in a subsequent FY’s appropriations. In light of this exception, contracting officers are instructed, as a precaution, to consult with legal counsel if a contractor becomes an inverted domestic corporation (or a subsidiary of one) during contract performance to ensure appropriate application of the prohibition.

Finally, the interim rule makes conforming changes to solicitation provisions and contract FAR clauses at 52.204–8, 52.209–2, 52.209–10, 52.213–3, and 52.212–5 so that offerors and contractors have clearer notice of the ongoing and continuing nature of the statutory prohibition on contracting

with inverted domestic corporations and their subsidiaries.

## 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 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.

## III. Regulatory Flexibility Act

DoD, GSA, and 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 small entities impacted by this rule will be minimal. Small business concerns are unlikely to have been incorporated in the United States (or, if a partnership, established in the United States) and then subsequently incorporated in a foreign country; the major participants in these transactions are reportedly 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 2014–017), 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. While the revisions in the interim rule do not change the scope or meaning of the statutory prohibition, they will help to better ensure agency compliance with the Continuing Appropriations Resolution, 2015 (Pub. L. 113–164) (continuing the prohibition found in section 733 of Division E of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76)). 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: December 5, 2014.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide 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 51 U.S.C. 20113.

## PART 9—CONTRACTOR QUALIFICATIONS

■ 2. Amend section 9.108–1 by revising the definition “Inverted domestic corporation” to read as follows:

### 9.108–1 Definitions.

\* \* \* \* \*

*Inverted domestic corporation* means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

\* \* \* \* \*

■ 3. Revise section 9.108–2 to read as follows:

### 9.108–2 Prohibition.

(a) Section 745 of Division D of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) prohibit, on a Governmentwide basis, the use of appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of such a corporation, except as provided in paragraph (b) of this section and in 9.108–4 Waiver.

(b)(1) Section 745 and its successor provisions include the following exception: This section shall not apply to any Federal Government contract entered into before the date of the enactment of this Act, or to any task order issued pursuant to such contract.

(2) To ensure appropriate application of the prohibition and this exception, contracting officers should consult with legal counsel if, during the performance of a contract, a contractor becomes an inverted domestic corporation or a subsidiary of one.

■ 4. Amend section 9.108–3 by revising paragraph (a) to read as follows:

### 9.108–3 Representation by the offeror.

(a) In order to be eligible for contract award, an offeror must represent that it is neither an inverted domestic corporation, nor a subsidiary of an inverted domestic corporation. Any offeror that cannot so represent is ineligible for award of a contract, unless waived in accordance with the procedures at 9.108–4.

\* \* \* \* \*

■ 5. Amend section 9.108–5 by revising the introductory text to read as follows:

### 9.108–5 Solicitation provision and contract clause.

The contracting officer shall—

\* \* \* \* \*

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

■ 6. Amend section 52.204–8 by revising the date of the provision and paragraph (c)(1)(v) to read as follows:

**52.204–8 Annual Representations and Certifications.**

\* \* \* \* \*

Annual Representations and Certifications (Dec 2014)

\* \* \* \* \*

(c)(1) \* \* \*

(v) 52.209–2, Prohibition on Contracting with Inverted Domestic Corporations—Representation.

\* \* \* \* \*

■ 7. Amend section 52.209–2 by revising the date of the provision and paragraphs (a) and (b) to read as follows:

**52.209–2 Prohibition on Contracting with Inverted Domestic Corporations—Representation.**

\* \* \* \* \*

Prohibition on Contracting With Inverted Domestic Corporations—Representation (Dec 2014)

(a) *Definitions. Inverted domestic corporation* and *subsidiary* have the meaning given in the clause of this contract entitled Prohibition on Contracting with Inverted Domestic Corporations (52.209–10).

(b) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108–2(b)

applies or the requirement is waived in accordance with the procedures at 9.108–4.

\* \* \* \* \*

■ 8. Amend section 52.209–10 by revising the date of the clause and in paragraph (a), the definition “Inverted domestic corporation” to read as follows:

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

\* \* \* \* \*

Prohibition on Contracting With Inverted Domestic Corporations (Dec 2014)

(a) \* \* \*

*Inverted domestic corporation* means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

\* \* \* \* \*

■ 9. Amend section 52.212–3 by revising the date of the provision; in paragraph (a), the definition “Inverted domestic corporation” and paragraph (n)(1) to read as follows:

**52.212–3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

Offeror Representations and Certifications—Commercial Items (Dec 2014)

(a) \* \* \*

\* \* \* \* \*

*Inverted domestic corporation* means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b),

applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

\* \* \* \* \*

(n) *Prohibition on Contracting with Inverted Domestic Corporations.* (1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108–2(b) applies or the requirement is waived in accordance with the procedures at 9.108–4.

\* \* \* \* \*

■ 10. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(1) through (3) as paragraphs (a)(2) through (4), respectively;

■ c. Adding a new paragraph (a)(1); and

■ d. Removing and reserving paragraph (b)(10).

The revision and addition 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 (Dec 2014)

(a) \* \* \*

(1) 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations (Dec 2014)

\* \* \* \* \*

[FR Doc. 2014–29153 Filed 12–12–14; 8:45 am]

BILLING CODE 6820–EP–P