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48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0076, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–65; 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 the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–65. 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 2005–65 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 2005–65

Item	Subject	FAR Case	Analyst
I	Prohibition on Contracting with Inverted Domestic Corporations	2012–013	Jackson.
II	Extension of Sunset Date for Protests of Task and Delivery Orders	2012–007	Lague.
III	Free Trade Agreement—Colombia	2012–012	Davis.
IV	Unallowability of Costs Associated with Foreign Contractor Excise Tax	2011–011	Chambers.
V	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 subjects set forth in the documents following these item summaries. FAC 2005–65 amends the FAR as specified below:

Item I—Prohibition on Contracting With Inverted Domestic Corporations (FAR Case 2012–013)

This rule adopts as final an interim rule implementing section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), which prohibits the award of contracts using Fiscal Year 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity. The interim rule extended an existing prohibition that applied to the use of Fiscal Year 2008 through 2010 funds. Contracting officers are prohibited from awarding contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity, unless an exception applies. This rule will not have any significant economic impact on small businesses because this rule only applies to an offeror that is 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.

Item II—Extension of Sunset Date for Protests of Task and Delivery Orders (FAR Case 2012–007)

This final rule amends the FAR to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383) and section 813 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). These statutes extend the sunset date for protests against awards of task or delivery orders to September 30, 2016. There is no effect on Government automated systems.

Item III—Free Trade Agreement—Colombia (FAR Case 2012–012)

This final rule adopts, with minor change, the interim rule published in the **Federal Register** at 77 FR 27548 on May 10, 2012, to implement the United States-Colombia Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement (FTA) that provides for mutually non-discriminatory treatment of eligible products and services from Colombia.

The Colombia FTA covers acquisition of supplies and services equal to or exceeding $77,494. The threshold for the Colombia FTA is $7,777,000 for construction. The excluded services for the Colombia FTA are the same as for the Bahrain FTA, Dominican Republic-Central American FTA, Chile FTA, NAFTA, Oman FTA, and Peru FTA.

Item IV—Unallowability of Costs Associated With Foreign Contractor Excise Tax (FAR Case 2011–011)

This final rule amends the FAR to implement certain requirements of section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, which imposes a 2 percent excise tax on certain Federal procurement payments to foreign persons. First, the statute disallows the cost of the 2 percent excise tax on certain foreign procurements as part of a payment, or as part of a cost-based negotiated price. Second, the statute stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed. This rule will have a minimal economic impact on small businesses because the 2 percent excise tax is applied only to foreign persons that receive Federal procurement payments pursuant to a contract with the Government of the United States for the provision of goods or services, if the goods are manufactured or produced in, or the services are performed in, a country that is not a party to an international procurement agreement with the United States.

Item V—Technical Amendments

Editorial changes are made at FAR 1.106, 2.000, and 31.205–6.

Dated: January 23, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–01740 Filed 1–28–13; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAC 2005–65; FAR Case 2012–013; Item I; Docket 2012–0013, Sequence 1]

RIN 9000–AM22

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: Final rule.

SUMMARY: DoD, GSA, and NASA are adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2012, that prohibits 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 such entity.

DATES: *Effective Date:* January 29, 2013.

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 2005–65, FAR Case 2012–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 77 FR 27547 on May 10, 2012, to implement section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), which was signed on December 23, 2011. The same Governmentwide restrictions are already incorporated in the FAR for funds appropriated in Fiscal Years 2008 through 2010, under FAR case 2008–009, published as an interim rule on July 1, 2009 (74 FR 31561), and as a final rule on May 31, 2011 (76 FR 31410).

An inverted domestic corporation is one that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country. See the definition of inverted domestic corporation at FAR 9.108–1.

Six respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

There are no changes to the interim rule as a result of the public comments.

B. Analysis of Public Comments

1. Support for the Prohibition

Comment: Almost all respondents strongly supported the intent of the rule, to prohibit the Government from doing business with inverted domestic corporations. Some provided specific comments that the rule should be enforced and continued. Some of the specific reasons provided for support were as follows:

a. Impact on U.S. jobs.

Comment: Several respondents stated that when millions of people in the United States are unemployed or under-employed, corporations that have ''turned their back'' on the United States and probably eliminated at least some of the jobs for American personnel should not receive Government contracts.

Response: The Councils note that the views of these respondents are in accord with the intent of the law and this FAR rule.

b. Companies should not be rewarded for tax avoidance.

Comment: Many respondents stated that companies should not be rewarded for tax avoidance, which enables them to compete unfairly with U.S. companies.

Response: The Councils note that the views of these respondents are in accord with the intent of the law and this FAR rule.

c. One respondent discussed additional costly measures that are required when dealing with inverted domestic corporations: *e.g.,* proxy agreements, authorization from national authorities, additional security measures.

Response: The Councils note that the views of this respondent are in accord with the intent of the law and this FAR rule.

2. Rule Should Be Even More Stringent

Comment: One respondent stated that the FAR rule on inverted domestic corporations is a good beginning, but does not go far enough to have any effect on the issue. The respondent requests that the Government should also stop distributors of the products of inverted domestic corporations from selling such products to the Government, because the manufacturers pay no income tax, and products they make off shore impede manufacturing growth of the United States economy and job creation.

Response: Prior to this FAR case 2012–013, the FAR already implemented restrictions that were contained in the FY 2008 through FY 2010 appropriations act restrictions: a provision at FAR 52.209–2, Prohibition on Contracting with Inverted Domestic Corporations—Representation; and a clause at 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations.

Comparable to the prior appropriations act restrictions, Section 738 of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), Division C, Title VII, prohibits the use of FY 2012 funds for contracts with any foreign entity which is treated as an inverted domestic corporation under section 835(b) of the Homeland Security Act of 2002. The statute only prohibits Government contracts directly awarded to an inverted domestic corporation. It does not cover contracts to distributors of the products of inverted domestic corporations.

The purpose of the interim rule under this FAR Case 2012–013 was to extend the existing prohibition to solicitations and contracts using FY 2012 funds. It did not propose any changes in interpretation or application of the statutory prohibition. Therefore, application to distributors of the products of inverted domestic corporations is outside the scope of this rule.

3. Relationship to Buy American Statute

Comment: One respondent stated that the Buy American Act of 1933 (now codified at 41 U.S.C. chapter 83) created