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Federal Acquisition Regulation; Final Rules

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

[Docket FAR 2011–0076; Sequence 7]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–55;
Introduction****AGENCIES:** 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) 2005–55. 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](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 2005–55 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 2005–55**

Item	Subject	FAR case	Analyst
I	Preventing Abuse of Interagency Contracts	2008–032	Sakalos.
II	Transition to the System for Award Management (SAM)	2011–021	Loeb.
III	Brand-Name Specifications	2005–037	Clark.
IV	Time-and-Materials and Labor-Hour Contracts for Commercial Items	2009–043	Sakalos.
V	Public Access to the Federal Awardee Performance and Integrity Information System	2010–016	Loeb.
VI	Updated Financial Accounting Standards Board Accounting References	2010–005	Chambers.
VII	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
2005–55 amends the FAR as specified
below:

**Item I—Preventing Abuse of
Interagency Contracts (FAR Case 2008–
032)**

This rule adopts as final, with
changes, an interim rule that
implemented section 865, Preventing
Abuse of Interagency Contracts, of the
Duncan Hunter National Defense
Authorization Act for Fiscal Year 2009
(Pub. L. 110–417). This final rule further
amends FAR subpart 17.5 to make it
clear that this rule only applies to
interagency acquisitions when an
agency needing supplies or services
obtains them using another agency's
contract; or when an agency uses
another agency to provide acquisition
assistance, such as awarding and
administering a contract, a task order, or
delivery order. A business case analysis
must be developed for the establishment
and renewal of governmentwide
acquisition contracts as well as for
multi-agency contracts. Additionally,
FAR 35.017 clarifies determination
requirements when using a Federally
Funded Research and Development
Center. This rule does not impose any

information collection requirements on
small business. There is no significant
impact on small businesses because this
rule is only applicable to internal
operating procedures of the
Government.

**Item II—Transition to the System for
Award Management (SAM) (FAR Case
2011–021)**

The Integrated Acquisition
Environment (IAE) systems are being
transitioned to a new System for Award
Management (SAM) architecture. This
effort will transition the Central
Contractor Registration (CCR) database,
the Excluded Parties Listing System
(EPLS), and the Online Representations
and Certifications Application (ORCA)
to SAM. The FAR change will indicate
that these IAE systems and the Disaster
Response Registry will now be accessed
through <http://www.acquisition.gov>.
This rule will not significantly affect
small business, as the only impact on
the public will be the Web site address
that offerors/contractors will need to
use.

**Item III—Brand-Name Specifications
(FAR Case 2005–037)**

This final rule adopts, with changes,
the interim rule that amended the FAR
to fully implement Office of
Management and Budget memoranda
and policies on the use of brand-name
specifications. The final rule clarifies
that when applicable, the

documentation or justification and
posting requirements for brand name
items only apply to the portion of the
acquisition that requires the brand name
item. The final rule also adds a
requirement to screen the brand name
documentation or justification for
contractor proprietary data. Further, the
final rule requires the contracting officer
to post the justifications for an order
peculiar to one manufacturer under
indefinite-delivery contracts. The rule
will benefit small business entities by
providing the opportunity for review of
brand-name justification and approval
documents for contracts and orders
awarded noncompetitively, thereby
increasing the opportunity for
competition for future awards.

**Item IV—Time-and-Materials and
Labor-Hour Contracts for Commercial
Items (FAR Case 2009–043)**

This final rule amends the FAR to
implement recommendations from the
Government Accountability Office to:
(1) Ensure that time-and-materials
(T&M) and labor-hour (LH) contracts are
used to acquire commercial services
only when no other contract type is
suitable, and (2) instill discipline in the
determination of contract type with a
view toward managing the risk to the
Government. The requirement for a
determination and findings when no
other contract type is suitable is added
to FAR 8.404, Use of Federal Supply
Schedules. FAR 8.404 has also been

amended to address increases in the order ceiling price of T&M and LH contracts, to more closely conform to the language at FAR 12.207. In addition, FAR 16.201 is modified and FAR 16.600 is added to clarify that T&M and LH contracts are not types of fixed-price contracts. This rule will not have a significant economic impact on a substantial number of small entities.

Item V—Public Access to the Federal Awardee Performance and Integrity Information System (FAR Case 2010–016)

This rule adopts as final, with changes, an interim rule. The interim rule implemented section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), enacted July 29, 2010. Section 3010 requires that the information in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, shall be made publicly available. The interim rule notified contractors of this new statutory requirement for public access to FAPIIS.

In response to public comments, the final rule allows a 14-calendar-day delay before making the data available to the public. Contractors have 7 calendar days within those 14 calendar days to assert a disclosure exemption under the Freedom of Information Act. In addition, the FAPIIS system has been modified to allow more space for contractor comments. The rule does not impose any new requirements on small businesses.

Item VI—Updated Financial Accounting Standards Board Accounting References (FAR Case 2010–005)

This final rule amends the FAR sections 31.205–11, 31.205–36, 52.204–10, 52.212–5, and 52.213–4 to update references to authoritative accounting standards owing to the Financial Accounting Standards Board's Accounting Standards Codification of Generally Accepted Accounting Principles ("Codification of GAAP"). These revisions have no effect other than to simply replace the superseded references with updated references.

Item VII—Technical Amendments

Editorial changes are made at FAR 4.603, 8.402, 8.405–5, 8.703, 15.402, 15.403–1, 19.102, 19.402, 22.404–1, 22.1304, 22.1306, 23.205, 23.401, 28.203–3, 42.203, 52.202–1, 52.212–3, 52.219–22, and 52.228–11.

Dated: December 21, 2011.

Laura Auletta,

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

Federal Acquisition Circular (FAC) 2005–55 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 2005–55 is effective January 3, 2012, except for Items I, II, III, IV, and VI which are effective February 2, 2012.

Dated: December 21, 2011.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: December 22, 2011.

Mindy S. Connolly,

Chief Acquisition Officer, U.S. General Services Administration.

Dated: December 20, 2011.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2011–33405 Filed 12–30–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 8, 9, 17, 18, 35, and 41

[FAC 2005–55; FAR Case 2008–032; Item I; Docket 2010–0107, Sequence 1]

RIN 9000–AL69

Federal Acquisition Regulation; Preventing Abuse of Interagency Contracts

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, to prevent abuse of interagency contracts.

DATES: *Effective Date:* February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Sakalos, Procurement Analyst, at (202) 208–0498 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–55, FAR Case 2008–032.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 77733 on December 13, 2010, to implement paragraphs (b) and (d) of section 865 of the Duncan Hunter National Defense Authorization Act (NDAA). The rule is designed to ensure that the benefits of interagency acquisitions are consistently achieved.

The FAR changes are applicable to all interagency acquisitions issued under the Economy Act (31 U.S.C. 1535) as well as other authorities, in recognition that an increasing number of interagency acquisitions are conducted using authorities other than the Economy Act. This rule strengthens FAR subpart 17.5, Interagency Acquisitions by—

- Broadening the scope of coverage to address all interagency acquisitions that result in a contract action, but does not apply to Federal Supply Schedule (FSS) orders under \$500,000;

- Requiring agencies to support the decision to use an interagency acquisition with a determination that such action is the “best procurement approach;” and

- Directing that assisted acquisitions be accompanied by written agreements between the requesting agency and the servicing agency documenting the roles and responsibilities of the respective parties.

Five respondents submitted comments on the interim rule. Two of the respondents from the same organization provided duplicate comments.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

As a result of public comments, changes were made to the interim rule to—

1. Make it clear that FAR subpart 17.5 applies to interagency acquisitions