

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

[Docket FAR–2006–0023]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–09;
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, and technical
amendments and corrections.**SUMMARY:** This document summarizes
the Federal Acquisition Regulation
(FAR) rules agreed to by the Civilian
Agency Acquisition Council and the
Defense Acquisition Regulations
Council in this Federal Acquisition
Circular (FAC) 2005–09. A companion
document, the Small Entity Compliance
Guide (SECG), follows this FAC. The
FAC, including the SECG, is availablevia the Internet at [http://
www.acqnet.gov/far](http://www.acqnet.gov/far).**DATES:** For effective dates and comment
dates, see separate documents which
follow.**FOR FURTHER INFORMATION CONTACT:** For
clarification of content, contact the
analyst whose name appears in the table
below in relation to each FAR case or
subject area. Please cite FAC 2005–09
and specific FAR case number(s).
Interested parties may also visit our
Web site at <http://www.acqnet.gov/far>.
For information pertaining to status or
publication schedules, contact the FAR
Secretariat at (202) 501–4755.

Item	Subject	FAR case	FAR Analyst
I	Federal Technical Data Solution (FedTeDS)	2004–007	Zaffos.
II	Definition of Information Technology	2004–030	Davis.
III	OMB Circular A–76	2004–021	Zaffos.
IV	Combating Trafficking in Persons (Interim)	2005–012	Clark.
V	Confirmation of HUBZone Certification	2005–009	Cundiff.
VI	Expiration of the Price Evaluation Adjustment	2005–002	Cundiff.
VII	Removal of Sanctions Against Certain European Union Member States (Interim)	2005–045	Clark.
VIII	Free Trade Agreements Morocco (Interim)	2006–001	Clark.
IX	Fast Payment Procedures	2004–031	Olson.
X	Technical Amendment.		

SUPPLEMENTARY INFORMATION:Summaries for each FAR rule follow.
For the actual revisions and/or
amendments to these FAR cases, refer to
the specific item number and subject set
forth in the documents following these
item summaries.FAC 2005–09 amends the FAR as
specified below:**Item I—Federal Technical Data
Solution (FedTeDS) (FAR Case 2004–
007)**This final rule amends the FAR to
require contracting officers to make
solicitation-related information that
requires limited availability or
distribution available to offerors
electronically via the Federal Technical
Data Solution (FedTeDS), unless certain
exceptions apply. FedTeDS provides
secure, user identification and password
protected access to solicitation-related
data that should not be made available
to the public on the Governmentwide
Point of Entry (GPE) Web site.**Item II—Definition of Information
Technology (FAR Case 2004–030)**This final rule adopts without change
the interim rule which amended FAR
2.101(b) by revising the definition for
“information technology” to reflect
changes to the definition resulting from
the enactment of Public Law 108–199,
Consolidated Appropriations Act, 2004.Section 535(b) of Division F of Public
Law 108–199 permanently revises the
term “information technology,” which
is defined at 40 U.S.C. 11101, to add
“analysis” and “evaluation” and to
clarify the term “ancillary equipment.”**Item III—OMB Circular A–76 (FAR
Case 2004–021)**This final rule amends FAR Subpart
7.3 to provide language that is
consistent with OMB Circular A–76
(Revised), *Performance of Commercial
Activities*, dated May 29, 2003. In
addition, it provides two new
provisions that inform potential offerors
of the procedures the Government will
follow for streamlined and standard
competitions, as they are defined in the
Circular.**Item IV—Combating Trafficking in
Persons (FAR Case 2005–012)**This interim rule amends FAR Parts
12, 22 and 52 to implement the
Trafficking Victims Protection
Reauthorization Act of 2003, as
amended by the Trafficking Victims
Protection Reauthorization Act of 2005.
The statute (22 U.S.C. 7104(g)) requires
that the contract contain a clause
allowing the agency to terminate the
contract without penalty if the
contractor or subcontractor engage in
severe forms of trafficking in persons or
has procured a commercial sex act, orused forced labor in the performance of
the contract. The interim rule applies to
contractors awarded service contracts
(other than commercial service contracts
under Part 12). Such contractors must
develop policies to combat trafficking in
persons and notify the contracting
officer immediately of any information
it received from any source that alleges
a contract employee has engaged in
conduct that violates this policy, and
any actions taken against the employee
pursuant to the clause.**Item V—Confirmation of HUBZone
Certification (FAR Case 2005–009)**The interim rule published at 70 FR
43581, July 27, 2005 is converted to a
final rule without change. The interim
rule amended FAR 19.703 and the
clause at 52.219–9 to clarify that prime
contractors must confirm that a
subcontractor representing itself as a
Historically Underutilized Business
Zone (HUBZone) small business
concern is certified, consistent with the
requirements of 15 U.S.C. 632 *et seq.*, as
amended. This change is expected to
increase subcontracting opportunities
for certified HUBZone small business
concerns and ensure accurate reporting
of subcontract awards to HUBZone
small business concerns under
Government contracts.

Item VI—Expiration of the Price Evaluation Adjustment (FAR Case 2005–002)

This final rule adopts, without change, an interim rule that amended the FAR to cancel the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change was required because the statutory authority for the adjustments had expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item VII—Removal of Sanctions Against Certain European Union Member States (FAR Case 2005–045)

This interim rule removes the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement (WTO GPA). These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products, services, and construction that were previously prohibited by the sanctions.

Item VIII—Free Trade Agreements - Morocco (FAR Case 2006–001)

This interim rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreement. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is \$193,000 for supplies and services, \$7,407,000 for construction.

Item IX—Fast Payment Procedures (FAR Case 2004–031)

This amendment permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked “Fast Pay”, provided the contract includes the “Fast Payment

Procedure” clause. If the Fast Payment clause is in the contract, such unmarked invoices will no longer be rejected. Instead, they will be paid using either fast payment or normal payment procedures. In addition, the revision deletes the requirement for marking invoices “No Receiving Report Prepared.”

X—Technical Amendment

An editorial change is made at FAR 19.1005(a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry “541310” the word “or”.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–09 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 2005–09 is effective May 19, 2006, except for Items II, IV, V, VI, VII, VIII, and X which are effective April 19, 2006.

Dated: April 8, 2006.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: April 12, 2006.

Roger D. Waldron,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: April 5, 2006.

Tom Luedtke,

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 2, 5, and 7

[FAC 2005–09; FAR Case 2004–007; Item I; Docket FAR–2006–0020]

RIN 9000–AK08

Federal Acquisition Regulation; FAR Case 2004–007, Federal Technical Data Solution (FedTeDS)

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require contracting officers to use the Federal Technical Data Solution (FedTeDS) for electronic posting of solicitation-related materials that require control over availability or distribution unless certain exceptions apply.

DATES: Effective Date: May 19, 2006.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2005–09, FAR case 2004–007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 63436 on November 1, 2004. The 60-day comment period for the proposed rule ended January 3, 2005. Sixteen comments were received from seven commenters. Some of the comments merely agreed with the concept of FedTeDS, others pointed out areas of concern. The substantive comments are discussed below.

Public Comments

1. *Comment:* FedTeDS will reduce competition on typical large construction projects. By restricting document access to those who are registered in CCR and have an access code, the use of FedTeDS will result in