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48 CFR Chapter 1

7 CFR Part 319

Federal Acquisition Regulation; Federal Acquisition Circular 2005-52;
Final Rules

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](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.

[FR Doc. 2011–12850 Filed 5–27–11; 8:45 am]

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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