

(2) The contracting officer shall—  
 (i) Review the proposed terms to ensure they comply with this section; and

(ii) Use the adjustment method at 32.205(c) if the price is to be adjusted for evaluation purposes in accordance with paragraph (e)(1)(ii) of this section.

■ 7. Revise section 32.1005 to read as follows:

**32.1005 Solicitation provision and contract clause.**

(a) Insert the clause at 52.232–32, Performance-Based Payments, in—

(1) Solicitations that may result in contracts providing for performance-based payments; and

(2) Fixed-price contracts under which the Government will provide performance-based payments.

(b)(1) Insert the solicitation provision at 52.232–28, Invitation to Propose Performance-Based Payments, in negotiated solicitations that invite offerors to propose performance-based payments.

(2) Use the provision with its Alternate I in competitive negotiated solicitations if the Government intends to adjust proposed prices for proposal evaluation purposes (see 32.1004(e)).

■ 8. Revise section 32.1007 to read as follows:

**32.1007 Administration and payment of performance-based payments.**

(a) *Responsibility.* The contracting officer responsible for administering performance-based payments (see 42.302(a)(12)) for the contract shall review and approve all performance-based payments for that contract.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all performance-based payment requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.

(c) *Reviews.* The contracting officer is responsible for determining what reviews are required for protection of

the Government’s interests. The contracting officer should consider the contractor’s experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to the Government, post-payment reviews and verifications should normally be arranged as considered appropriate by the contracting officer. If considered necessary by the contracting officer, pre-payment reviews may be required.

(d) *Incomplete performance.* The contracting officer shall not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the contracting officer shall not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

(e) *Government-caused delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the contracting officer may renegotiate the performance-based payment schedule to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

**32.1009 [Amended]**

■ 9. Amend section 32.1009 by removing from the first sentence in paragraph (a) the word “must” and adding “shall” in its place.

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

- 10. Amend section 52.232–32 by—
- a. Revising the clause date;
- b. Revising the second sentence of paragraph (c)(2); and
- c. Removing from the first sentence of paragraph (f)(5) the word “must” and adding “shall” in its place.

**52.232–32 Performance-based payments.**

\* \* \* \* \*

**PERFORMANCE-BASED PAYMENTS (JAN 2008)**

(c) \* \* \*

(2) \* \* \* The designated payment office will pay approved requests on the \_\_\_\_\_ [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert “30th”] day after receipt of the request for performance-based payment by the designated payment office. \* \* \*

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR–2007–0002, Sequence 9]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–23; Small Entity Compliance Guide**

**AGENCIES:** 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 the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. 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 rules appearing in Federal Acquisition Circular (FAC) 2005–23 which amend the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–23 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Diedra Wingate, FAR Secretariat, (202) 208–4052. For clarification of content, contact the analyst whose name appears in the table below.

**LIST OF RULES IN FAC 2005–23**

Item	Subject	FAR case	Analyst
I *	Electronic Products Environmental Assessment Tool (EPEAT) (Interim) .....	2006–030	Clark.
II	Contracts with Religious Entities .....	2006–019	Woodson.
III	Performance-Based Payments .....	2005–016	Murphy.

**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 2005–23 amends the FAR as specified below:

**Item I—Electronic Products Environmental Assessment Tool (EPEAT) (FAR Case 2006–030) (Interim)**

This interim rule amends the Federal Acquisition Regulation (FAR) to require use of the Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors pursuant to the Energy Policy Act of 2005 and Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.” The interim rule revises Subpart 23.7, and prescribes a new clause in 52.223 (also included in 52.212–5 for acquisition of commercial

items) in all solicitations and contracts for the acquisition of personal computer products, services that require furnishing of personal computer products for use by the Government, and services for contractor operation of Government-owned facilities.

**Item II—Contracts With Religious Entities (FAR Case 2006–019)**

This final rule adopts as final, without change, the interim rule published in the **Federal Register** on March 22, 2007. The interim rule amended the Federal Acquisition Regulation (FAR) Parts 22 and 52 to implement Executive Order (E.O.) 11246, as amended, Equal Employment Opportunity, to incorporate the exemption for religious entities prescribed in E.O. 13279. Section 4 of E.O. 13279 amended Section 204 of E.O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. E.O. 11246, as amended, permits religious entities to consider employment of individuals of a

particular religion to perform work connected with carrying on the entity’s activities. Religious entities are not exempt from other requirements of the executive order.

**Item III—Performance-Based Payments (FAR Case 2005–016)**

This final rule amends the Federal Acquisition Regulation to increase the use of performance-based payments as the method of contract financing on Federal Government contracts and improve the efficiency of performance-based payments when used on these contracts. These changes originated from recommendations submitted by the Department of Defense Performance-Based Payments Working Group in their March 8, 2005, report.

Dated: December 19, 2007.

**Al Matera,**

*Director, Office of Acquisition Policy.*

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