

## **FAC 2005-19 amends the FAR as specified below:**

### **Item I—Reporting of Purchases from Overseas Sources (FAR Case 2005-034)**

This final rule converts the interim rule to a final rule with a minor change. The interim rule amended FAR Part 25 and added a provision (52.225-18, Place of Manufacture) to implement Section 837 of Division A of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109-115). Section 837 requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies that are manufactured outside the United States. The new provision requests from offerors necessary data regarding place of manufacture. The new provision will require an offeror to indicate whether the place of manufacture of the end products it expects to provide in response to the solicitation is predominantly inside or outside the United States. Whenever the place of manufacture for a contract is coded as outside the United States, the contracting officer will be required to enter into the Federal Procurement Data System – Next Generation (FPDS-NG) the reason for buying items manufactured outside the United States. In addition, the rule clarifies different tests used to determine the country of origin (FAR 25.001) under the Buy American Act and the Trade Agreements Act.

DOE Acquisition Letter 2002-06, Domestic and Foreign Procurement Preference Rules, addresses FAR requirements as they relate to DOE acquisition programs. The policy and procedures in the Acquisition Letter are being reviewed for timeliness.

GSA is revising the on line FPDS-NG input form to accommodate this change.

### **Item II—Changes to Lobbying Restrictions (FAR Case 2005-035)**

This final rule amends the FAR in order to be consistent with the Lobbying Disclosure Act of 1995 and the OMB Interim Final Guidance, and to improve clarity of the regulation through improved use of plain language and compliance with FAR drafting conventions. Among the changes, this final rule includes the new concept of “lobbying contact” and brings in the concept of registrants under the Lobbying Act of 1995; it includes the OMB guidance that the term “appropriated funds” does not include profit or fee from a covered Federal action and that to the extent the contractor can demonstrate that the contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds; it formalizes in the regulations the changes that were already incorporated in the OMB Form Standard Form LLL, Disclosure of Lobbying Activities; it removes 31 U.S.C. 1352, Limitations on Payment to Influence Certain Federal Transactions), from the list of laws that are inapplicable to subcontracts for the acquisition of commercial item; and it makes the text, provisions, and clauses easier to understand, for both contracting officers and offerors/contractors.

The DOE Lobbying brochure will be updated to accommodate these changes.

### **Item III—Online Representations and Certifications Application Archiving Capability (FAR Case 2005-025)**

This final rule amends the FAR to eliminate confusion between the record retention requirements at FAR 4.803 and the requirements at FAR Subpart 4.12 requiring contractors to submit Annual Representations and Certifications via the Online Representations and Certifications Application (ORCA), a part of the Business Partner Network. Using ORCA eliminates the administrative burden for contractors of submitting the same information to various contracting offices, and establishes a common source for this information to procurement offices throughout the Government. The interim rule published at 71 FR 57362, September 28, 2006, is adopted as final without change.

This change does not alter existing DOE procedures.

### **Item IV—Requirement to Purchase Approved Authentication Products and Services (FAR Case 2005-017)**

This final rule amends the Federal Acquisition Regulation (FAR) to address the acquisition of products and services for personal identity verification that comply with requirements in Homeland Security Presidential Directive (HSPD) 12, “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPS PUB) 201, “Personal Identity Verification of Federal Employees and Contractors.”

DOE Acquisition Letter 2005-10 is hereby cancelled, as this FAR coverage now supersedes it.

### **Item V—Combating Trafficking in Persons (FAR Case 2005-012) (Interim)**

This revised interim rule amends the Federal Acquisition Regulation (FAR) to implement 22 U.S.C. 7104(g). This statute requires that contracts must include a clause that authorizes the department or agency to terminate the contract, if the contractor, contractor employee, subcontractor, or subcontractor employee engages in trafficking in persons. To accurately reflect the statutory language, the revised interim rule provides for contract termination for engaging in severe forms of trafficking in persons or procurement of a commercial sex act during the period of performance of the contract, and provides for contract termination for use of forced labor in the performance of the contract. While the interim rule only applied to contracts for services (other than commercial), this revised interim rule applies to all contracts, including contracts for supplies, and all contracts for commercial items as defined at 2.101.

See coverage previously issued as Policy Flash 2006-51, dated August 29, 2006.

### **Item VI—Emergency Acquisitions (FAR Case 2005-038)**

This final rule converts the interim rule published at 71 FR 38247, July 5, 2006, to a final rule with changes. This final rule amends the Federal Acquisition Regulation (FAR) to provide a

consolidated reference to acquisition flexibilities and improves the contracting officer's ability to expedite acquisition of supplies and services during emergency situations. The final rule makes no change to existing contracting policy.

See also, DOE Acquisition Guide Chapter 18 and the Emergency Acquisition Guide issued by the Office of Federal Procurement Policy, May 2007 (Policy Flash 2007-50 dated June 28, 2007).

**Item VII—Small Business Credit for Alaska Native Corporations and Indian Tribes (FAR Case 2004-017)**

This final rule amends the Federal Acquisition Regulation (FAR) to provide that contractors may count subcontracts awarded to Alaskan Native Corporations (ANCs) and Indian tribes towards the satisfaction of goals for subcontracting with small business (SB) and small disadvantaged business (SDB) concerns, regardless of their size. This rule implements Section 702 of Pub. L. 107-117, as amended by Section 3003 of Pub. L. 107-206. These changes are expected to increase subcontracting opportunities for ANCs and Indian tribes, and improve Government and contractor subcontracting performance with these entities.

Previous coverage was provided by Policy Flash 2006-32 dated May 24, 2006 which is now replaced by the FAR coverage.

**Item VIII—New Designated Countries—Bulgaria, Dominican Republic, and Romania (FAR Case 2006-028) (Interim)**

This interim rule allows contracting officers to purchase the goods and services of Bulgaria, the Dominican Republic, and Romania without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. This trade agreement with the Dominican Republic joins the North American Free Trade Agreement (NAFTA), the Australia, Bahrain, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Guatemala, Honduras, and Nicaragua, which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is \$64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and \$7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). Bulgaria and Romania have become parties to the World Trade Organization Government Procurement Agreement, so they are now designated countries.

DOE Acquisition Letter (AL) 2002-06, Domestic and Foreign Procurement Preference Rules, addresses FAR requirements as they relate to DOE acquisition programs. The policy and procedures in the AL are being reviewed for timeliness.

**Item IX—Online Representations and Certifications Application (ORCA) Review (FAR Case 2006-025) (Interim)**

This interim rule amends FAR 23.406 and 23.906, both titled Solicitation provision and contract clause, to revise the prescriptions for the use of FAR 52.223-9 and 52.223-14 to provide for use under the same circumstances as the prescription for their associated provisions. These revisions allow the proper receipt of certification information and ensure compliance with the statutory requirements of 40 CFR Part 247 and 42 U.S.C. 11023.

**Item X—Free Trade Agreements—El Salvador, Honduras, and Nicaragua (FAR Case 2006-006)**

This final rule converts the interim rule published at 71 FR 36935, June 28, 2006, to a final rule without change. This rule allows contracting officers to purchase the products of El Salvador, Honduras, and Nicaragua without application of the Buy American Act if the acquisition is subject to the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR). The CAFTA-DR took effect with respect to El Salvador on March 1, 2006. It took effect with respect to Honduras and Nicaragua on April 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, Bahrain, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the CAFTA-DR is \$64,786 for supplies and services, and \$7,407,000 for construction.

DOE Acquisition Letter (AL) 2002-06, Domestic and Foreign Procurement Preference Rules, addresses FAR requirements as they relate to DOE acquisition programs. The policy and procedures in the AL are currently being reviewed for timeliness.

**Item XI—Free Trade Agreements—Bahrain and Guatemala (FAR Case 2006-017)**

This final rule converts the interim rule published at 71 FR 67776, November 22, 2006, to a final rule without change. The rule allows contracting officers to purchase the goods and services of Bahrain and Guatemala without application of the Buy American Act, if the acquisition is subject to the Free Trade Agreements. These trade agreements with Bahrain and Guatemala join the North American Free Trade Agreement (NAFTA), the Australia, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Honduras, and Nicaragua that are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is \$64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and \$7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA). The threshold for applicability of the Bahrain Free Trade Agreement is \$193,000 (the same as the Morocco FTA and the WTO GPA) and \$8,422,165 for construction (the same as NAFTA).

DOE Acquisition Letter (AL) 2002-06, Domestic and Foreign Procurement Preference Rules, addresses FAR requirements as they relate to DOE acquisition programs. The policy and procedures in the AL are currently being reviewed for timeliness.

## **Item XII—Accepting and Dispensing of \$1 Coin (FAR Case 2006-027) (Interim)**

This interim rule implements the Presidential \$1 Coin Act of 2005 (Pub. L. 109-145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of the Presidents of the United States in the order of their service and to continue to mint and issue “Sacagawea-design” coins for circulation.

In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises.

## **Item XIII—Technical Amendments**

Editorial changes are made at FAR 31.201-5, 32.006-1, 32.006-2, 52.212-5, 52.232-16, and 52.245-1 in order to update references.