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Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
7 CFR Part 319

Federal Acquisition Regulation; Federal Acquisition Circular 2005–52; Final Rules
This final 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.

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 indirect cost rates; adds language for withholding fees to protect the Government’s interest and encourage timely submissions of an adequate final indirect cost rate proposal; and adds additional requirements on small businesses.

This final rule implements 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.

This final rule modifies FAR 42.302, 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.

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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.

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.
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. Neumann,
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]
BILLING CODE 6820–EP–P

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, 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