

FAC 2005-45 is summarized below and states whether any DOE supplemental guidance will be issued.

Item I—Inflation Adjustment of Acquisition—Related Thresholds

(FAR Case 2008–024) (Final)

48 CFR Parts 1, 2, 3, 5, 6, 7, 8, 12, 13, 15, 16, 17, 19, 22, 23, 28, 32, 36, 42, 50, and 52

Effective date: October 1, 2010

This final rule amends the FAR to implement section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 requires an adjustment every 5 years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. The Councils have also used the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2010. This is the second review of FAR acquisition-related thresholds. The effect of the final rule on heavily-used thresholds is as follows:

- The micro-purchase base threshold of \$3,000 (FAR 2.101) is not changed.
- The simplified acquisition threshold (FAR 2.101) is raised from \$100,000 to \$150,000.
- The FedBizOpps preaward and post-award notices (Part 5) remain at \$25,000 because of trade agreements.
- Commercial items test program ceiling (FAR 13.500) is raised from \$5,500,000 to \$6,500,000.
- The cost or pricing data threshold (FAR 15.403-4) is raised from \$650,000 to \$700,000.
- The prime contractor subcontracting plan (FAR 19.702) floor is raised from \$550,000 to \$650,000, and the construction threshold of \$1,000,000 increases to \$1,500,000.
- See FAR text for other threshold changes.

No additional DOE supplemental guidance will be issued.

Item II—Definition of Cost or Pricing Data

(FAR Case 2005–036) (Final)

48 CFR Parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52

Effective date: October 1, 2010

This final rule amends the FAR by redefining “cost or pricing data,” adding a definition of “certified cost or pricing data,” and changing the term “information other than cost or pricing data,” to “data other than certified cost or pricing data.” The rule clarifies the existing authority for contracting officers to require certified cost or pricing data or data other than certified cost or pricing data, and the existing requirements for submission of the various types of pricing data. The rule is required to eliminate confusion and misunderstanding, especially regarding the authority of the contracting officer to request data other than certified cost or pricing data when there is no other means to determine

that proposed prices are fair and reasonable. Most significantly, the rule clarifies that data other than certified cost or pricing data may include the identical types of data as certified cost or pricing data but without the certification. Because the rule clarifies existing requirements, it will have only minimal impact on the Government, offerors, and automated systems.

No additional DOE supplemental guidance will be issued.

**Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—
Buy American Requirements for Construction Materials**

(FAR Case 2009–008) (Final) 48 CFR Parts 2, 5, 25, and 52

Effective Date: October 1, 2010

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after the effective date of this rule. Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts to include the appropriate FAR clause for future work, if Recovery Act funds will be used. In the event that a contractor refuses to accept such a modification, the contractor will not be eligible for award of any work that uses Recovery Act funds.

This final rule converts the interim rule published in the *Federal Register* at 74 FR 14623, March 31, 2009, to a final rule with changes. This final rule implements section 1605 of Division A of the American Recovery and Reinvestment Act (Recovery Act) of 2009. It prohibits the use of funds appropriated for or otherwise made available by the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605 mandates application of the Recovery Act Buy American requirement in a manner consistent with U.S. obligations under international agreements. Least developed countries continue to be treated as designated countries per congressional direction. Section 1605 also provides for waivers under certain limited circumstances.

No additional DOE supplemental guidance will be issued.

- To view FAC 2005-45 go to the Federal Register Browse weblink at <http://www.gpoaccess.gov/fr/browse.html> and search for the Federal Register Volume 75, Number 167 for Monday, August 30, 2010.
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FAC 2005-46 is summarized below and states whether any DOE supplemental guidance will be issued.

Item I – Equal Opportunity for Veterans

(FAR Case 2009-007) (Interim) 48 CFR Parts 1, 22 and 52

Effective date: September 29, 2010

Applicability date: Contracting officers may modify existing contracts of \$100,000 or more that were awarded or modified on or after December 1, 2003, to require the use of the new VETS- 100A form starting with the report filed September 30, 2010.

This interim rule implements the Department of Labor's (DOL) final rule that was published in the Federal Register at 72 FR 44393 on August 8, 2007. The rule implements amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA). The rule (1) renames FAR subpart 22.13 "Equal Opportunity for Veterans"; (2) renames FAR clause 52.222-35 "Equal Opportunity for Veterans" and incorporates the new categories and definitions of protected veterans as established by DoL; (3) renames FAR clause at 52.222-37 "Employment Reports on Veterans" and incorporates the new DoL requirements for using the VETS-100A report; and (4) renames the FAR provision at 52.222-38 "Compliance with Veterans' Employment Reporting Requirements" and incorporates the new title references for FAR 52.222-37, in addition to the new report form VETS-100A.

A Policy Flash will be issued to provide additional guidance regarding the categories of veterans covered by the equal opportunity provisions and the new Federal Contractor Veterans' Employment Report, VETS-100A form, to be used for reporting the revised categories of veterans that contractors are to track and report.

Item II--Certification Requirement and Procurement Prohibition Relating to Iran Sanctions

(FAR Case 2010-012) (Interim) 48 CFR Parts 4, 25 and 52
Effective date: September 29, 2010

This interim rule amends the FAR by enhancing efforts to enforce sanctions with Iran. The rule implements requirements imposed by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), specifically sections 102 and 106. To implement section 102, the FAR will require certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. This rule also partially implements section 106 of Public Law 111-195, which imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of Section 106 in FAR Case 2010-018. This rule will have little effect on United States small business concerns, because such dealings with Iran are already prohibited in the United States.

No additional DOE supplemental guidance will be issued.

Item III — Termination for Default Reporting

(FAR Case 2008-016) (Final) 48 CFR Parts 8, 12, 15, 42, and 49
Effective Date: October 29, 2010

This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR parts 8, 12, 15, 42, and 49. The purpose of the rule is to establish procedures for contracting officers to provide contractor information into the Federal Awardee Performance & Integrity Information System (FAPIIS) module of Past Performance Information System (PPIRS). This case sets forth requirements for reporting defective cost or pricing data and terminations for cause or default and any amendments. Evaluation of past performance information, especially terminations, manages risks associated with timely, effective and cost efficient completion of contracts, a key objective of the President's March 4, 2009, Memorandum on Government Contracting.

For DOE, the FAPIIS module of PPIRS is available at <http://www.cpars.csd.disa.mil>, then select FAPIIS).

For guidance on DOE reporting, see Acquisition Guide Chapter 42.16, Reporting Other Contractor Information into Federal Awardee Performance and Integrity Information System.

Item IV – Award-Fee Language Revision
(FAR Case 2008-008) (Final) 48 CFR Part 16
Effective date: October 29, 2010

This final rule adopts as final, with minor changes, the interim rule published on October 14, 2009. The interim rule amended the FAR to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), and the Office of Federal Procurement Policy guidance memorandum dated December 4, 2007 entitled, Appropriate Use of Incentive Contracts. This final rule adopts the interim rule with one change for clarification. This clarification entails the addition of the phrase "in the aggregate" to FAR 16.401(e)(2), Table 16-1, and FAR 16.401(e)(3)(v), to make it clear that the objective is to consider the contractor's cost, schedule, and technical performance in the aggregate when performing award-fee assessments.

No additional DOE supplemental guidance will be issued.

Item V - Offering a Construction Requirement -- 8(a)
(FAR Case 2009-020) (Final) 48 CFR Part 19
Effective date: October 29, 2010

This final rule amends the FAR to revise subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), to conform to the Small Business Administration (SBA) regulations. The revision changes the location for submitting offering letters to SBA for a construction requirement for which a specific offeror is nominated and impacts internal procedures that the contracting officer is now required to follow.

This revision will be incorporated, as applicable, into the DEAR Part 919 Notice of Proposed Rulemaking.

Item VI—Encouraging Contractor Policies to Ban Text Messaging While Driving
(FAR Case 2009–028) (Interim) 48 CFR Parts 23 and 52

Effective Date: September 29, 2010

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after September 29, 2010. However, contracting officers are encouraged to modify existing contracts, in accordance with FAR 1.108(d)(3), to include the FAR clause.

This interim rule amends the FAR to implement Executive Order 13513, entitled “Federal Leadership on Reducing Text Messaging while Driving,” which was issued on October 1, 2009 (74 FR 51225, October 6, 2009). Section 4 of the Executive Order requires each Federal agency, in procurement contracts, entered into after the date of the order, to encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving company-owned or –rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Section 4 also requires Federal agencies to encourage contractors to conduct initiatives such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts. Contracting officers are encouraged to modify existing contracts to include the FAR clause. *No additional DOE supplemental guidance will be issued.*

**Item VII--Buy American Exemption for Commercial Information Technology--
Construction Material**

(FAR Case 2009-039) (Interim) 48 CFR Parts 25 and 52

Effective Date: September 29, 2010

This interim 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 same exemption has appeared every year since Fiscal Year 2004 (section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108-199)). The Fiscal Year 2004 exemption was implemented through deviations by the individual agencies. Subsequently, regulations were published to implement the exemption for supplies (71 FR 223, January 3, 2006). The exemption for construction material was not implemented until publication of this interim rule. The interim rule is based on the probability that the exemption of commercial information technology is likely to continue. If the exception does not appear in a future appropriations act, a prompt change to the FAR will be made to limit applicability of the exemption to the fiscal years to which it applies. *No additional DOE supplemental guidance will be issued.*

(FAR Case 2009–039) (Interim) 48 CFR Parts 25 and 52
Effective date: September 29, 2010

- **To view FAC 2005-46 go to the Federal Register Browse weblink at <http://www.gpoaccess.gov/fr/browse.html> and search for the Federal Register Volume 75, Number 188 for Wednesday, September 29, 2010.**