

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Docket FAR—2006—0023**

**Federal Acquisition Regulation; Federal Acquisition Circular 2005—10; Introduction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final and interim rules, and technical amendments and corrections.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005—10. 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.acquisition.gov/far>.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**FOR FURTHER INFORMATION CONTACT** For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005—10 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.acquisition.gov/far>. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501—4755.

Item	Subject	FAR case	Analyst
I .....	Central Contractor Registration —Taxpayer Identification Number (TIN) Validation .....	2005—007	Jackson.
II .....	Procedures Related to Procurement Center Representatives .....	2006—003	Cundiff.
III .....	Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items .....	2004—035	Olson.
IV .....	Implementation of Wage Determinations OnLine (WDOL) (Interim) .....	2005—033	Sochon.
V .....	Free Trade Agreements—El Salvador, Honduras, and Nicaragua (Interim) .....	2006—006	Sochon.
VI .....	Buy-Back of Assets .....	2004—014	Olson.
VII .....	Technical Amendments .....		

**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—10 amends the FAR as specified below:

**Item I—Central Contractor Registration—Taxpayer Identification Number (TIN) Validation (FAR Case 2005—007)**

The rule adds the process of the government validating a Central Contractor Registration (CCR) registrant’s taxpayer identification number (TIN) with the Internal Revenue Service (IRS) to improve the quality of data in the CCR and the federal procurement system. Additionally, the rule removes outdated language requiring modifications of contracts prior to December 31, 2003, regarding CCR.

**Item II—Procedures Related to Procurement Center Representatives (FAR Case 2006—003)**

This final rule amends the Federal Acquisition Regulation (FAR) to provide internal procedures to cover situations when the FAR requires interaction with a procurement center representative and one has not been assigned to the procuring activity or contract administration office. It primarily impacts contracting officers and procurement center representatives.

**Item III—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004—035)**

This final rule amends the interim rule issued in FAC 2005—004 and implements an amendment to 10 U.S.C. 2306a. The policy requires that the exception from the requirement to obtain certified cost or pricing data for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than \$500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 of Public Law 108—375, the Ronald W. Reagan National Defense Authorization Act of Fiscal Year 2005 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005. This new policy results from a statute which changed 10 U.S.C. 2306a. 10 U.S.C. 2306a applies only to contracts or task or delivery orders funded by DoD, NASA, and the Coast Guard. The new policy does, however, also apply to contracts awarded or task or delivery orders placed on behalf of DoD, NASA, or the Coast Guard by an official of the United States outside of those agencies, because the statutory requirement of Section 818 applies to the funds provided by DoD, NASA, or the Coast Guard.

The change to the interim rule clarifies the policy to ensure it is applied properly. The threshold in the rule applies to an instant contract

action, not to the total value of all contract actions and, as applicable to subcontractors, the threshold applies to the value of the subcontract, not the value of the prime contract.

**Item IV—Implementation of Wage Determinations OnLine (WDOL) (FAR Case 2005—033) (Interim)**

This interim rule implements the Department of Labor (DOL) Wage Determinations OnLine (WDOL) internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O’Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website.

The Contracting Officer (CO) will be able to check the WDOL website (<http://www.wdol.gov>) to find the applicable wage determination for a contract action subject to the SCA or DBA. If the WDOL database does not contain the applicable wage determination for a SCA contract action, the CO must use the e98 process to request a wage determination from DOL. The e98 means a DOL approved electronic application, (available at <http://www.wdol.gov>), whereby a contacting officer submits pertinent information to the DOL and requests a wage determination directly from the Wage and Hour Division. With regard to DBA requirements, if the WDOL

database does not contain the applicable wage determination for a DBA contract action, the CO must request a wage determination by submitting SF-308 to DOL.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 99, 98, and 98a are deleted from FAR Part 53. This interim rule also incorporates new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office (GPO) publication of general wage determinations.

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

This interim rule allows contracting officers to purchase the goods and services of El Salvador, Honduras, and Nicaragua without application of the Buy American Act, if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated the Dominican Republic—Central America—United States Free Trade Agreement with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. However, the agreements will not all take effect at the same time. This agreement with El Salvador, Honduras, and Nicaragua joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, and Singapore Free Trade Agreements 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 and Canada) and \$7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA).

#### **Item VI—Buy-Back of Assets (FAR Case 2004-014)**

This final rule amends the Federal Acquisition Regulation (FAR) contract cost principle for depreciation costs. The final rule adds language which addresses the allowability of depreciation costs of reacquired assets involved in a sale and leaseback arrangement.

#### **Item VII—Technical Amendments**

Editorial changes are made at FAR 8.714, 33.102, and 52.225-11 in order to update references.

Dated: June 20, 2006.

**Ralph De Stefano,**

*Director, Contract Policy Division.*

#### **Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005-10 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 2005-10 is effective, July 28, 2006 except for Items IV, V, and VII which are effective June 28, 2006.

Dated: June 19, 2006.

**Shay D. Assad,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: June 20, 2006.

**Roger D. Waldron,**

*Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.*

Dated: June 19, 2006.

**Tom Luedtke,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 2, 4, and 52**

**[FAC 2005-10; FAR Case 2005-007; Item I; Docket 2006-0020, Sequence 9]**

**RIN 9000-AK33**

#### **Federal Acquisition Regulation; FAR Case 2005-007, Central Contractor Registration—Taxpayer Identification Number (TIN) Validation**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to include the process of validating a Central Contractor Registration (CCR) registrant's taxpayer

identification number (TIN) with the Internal Revenue Service (IRS) to improve the quality of data in the Federal procurement system. Additionally, the amendment removes outdated language requiring modifications of contracts prior to December 31, 2003, regarding CCR.

**DATES:** *Effective Date:* July 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949. Please cite FAC 2005-10, FAR case 2005-007. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Vendor registration in the CCR as a pre-requisite for receiving a contract has been required in the Department of Defense since 1998, and in civilian agencies since 2003. Since CCR's inception, validation of a registrant's TIN with the IRS has been contemplated in order to improve the quality of data throughout the Federal procurement system. This capability, although actively pursued, was never implemented as the Internal Revenue Code (I.R.C.) restricted disclosure of TINs without the taxpayer's consent, which due to technology at the time, would have been costly and inefficient to pursue. However, in its Fall 2004 "Report to Senate Committee on Governmental Affairs Permanent Subcommittee on Investigations," the Federal Contractor Tax Compliance Task Force (which included the Office of Management and Budget, the Department of Treasury, the Department of Defense, the General Services Administration, the Department of Justice, and the IRS) recommended that "... a consent-based TIN validation under I.R.C. § 6103 should be instituted." The capability for an event driven, near real-time, or real-time, web-based solution integrating the CCR with an IRS validation is now possible due to advances in technology. The Task Force recommended updating the FAR to specifically identify the validation of the TIN as a part of CCR registration. In August 2005, a computer matching agreement was established between the IRS, as manager of the TIN database; GSA, as manager of the Integrated Acquisition Environment (IAE) Federal eGov initiative; and DOD, as executive agent for CCR.

Additionally, FAR Subpart 4.11, Central Contractor Registration, contains language that was included when this subpart was implemented in the FAR in