

**Offeror Representations and Certifications—
Commercial Items (May 2011)**

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(a) * * *

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Inverted domestic corporation, as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), i.e., a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

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Subsidiary means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

* * * *

(n) *Prohibition on Contracting with Inverted Domestic Corporations*—(1) *Relation to Internal Revenue Code*. An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code 25 U.S.C. 7874.

(2) *Representation*. By submission of its offer, the offeror represents that—

- (i) It is not an inverted domestic corporation; and
- (ii) It is not a subsidiary of an inverted domestic corporation.

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■ 9. Amend section 52.212–5 by revising the date of the clause; redesignating paragraphs (b)(7) through (48) as (b)(8) through (49), respectively; and adding a new paragraph (b)(7) to read as follows:

**52.212–5 Contract Terms and Conditions
Required To Implement Statutes or
Executive Orders—Commercial Items.**

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**Contract Terms and Conditions Required To
Implement Statutes or Executive Orders—
Commercial Items (May 2011)**

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(b) * * *

___(7) 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations (section 740 of Division C of Public Law 111–117, section 743 of Division D of Public Law 111–8, and section 745 of Division D of Public Law 110–161)

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[FR Doc. 2011–12853 Filed 5–27–11; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 25 and 52****[FAC 2005–52; FAR Case 2009–039; Item
IV; Docket 2010–0104, Sequence 1]****RIN 9000–AL62****Federal Acquisition Regulation; Buy
American Exemption for Commercial
Information Technology—Construction
Material**

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010, to authorize exemption from the Buy American Act for acquisition of information technology that is a commercial item.

DATES: *Effective Date:* May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202 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 2009–039.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 60266 on September 29, 2010, to implement section 615 of the Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). No comments were received by the close of the public comment period on November 29, 2010.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simplifies the treatment of construction material that is also a commercial information technology item, which constitutes a small percentage of the overall construction material in a project. This final rule does not affect small business set-asides to the prime contractor or the small business subcontracting goals. Construction contracts that exceed \$7,804,000 and are subject to trade agreements already exempt designated country construction material from the Buy American Act.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0141, titled: Buy America Act—Construction—FAR Sections Affected: Subpart 25.2; 52.225–9; and 52.225–11.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

**Interim Rule Adopted as Final Without
Change**

Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published in the **Federal Register** at 75 FR 60266 on September 29, 2010, is adopted as final without change.

[FR Doc. 2011–12854 Filed 5–27–11; 8:45 am]

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